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November 21, 1994

Hon. Vernon A. Williams
Acting Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423

Re: RECORDATION OF ALTSI TRUST 94-B LEASE AGREEMENT,
LEASE SUPPLEMENT NO. 1, TRUST INDENTURE AND
SECURITY AGREEMENT, AND INDENTURE SUPPLEMENT NO. 1

Dear Mr. Secretary:

In accordance with the provisions of Section 11303 of Title 49 of the U.S. Code, and Rules and Regulations of the Interstate Commerce Commission thereunder, enclosed herewith for filing and recordation are (2) executed originals and (1) counterpart of the documents described below:

The documents, all of which are primary documents, are as follows: 1) Lease Agreement dated as of November 15, 1994 (excluding Annex B thereto) between Meridian Trust Company ("Owner Trustee") and APL Land Transport Services, Inc. ("Lessee"); 2) Lease Supplement No. 1 dated November 21, 1994 between Owner Trustee and Lessee; 3) Trust Indenture and Security Agreement dated as of November 15, 1994 between Owner Trustee and First Security Bank of Utah, National Association, as indenture trustee ("Indenture Trustee"); and 4) Indenture Supplement No. 1, dated November 21, 1994 between Owner Trustee and Indenture Trustee.

Secretary - Su - Jui Lee

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The names and addresses of the parties to the documents are as follows:

Owner	Meridian Trust Company
Trustee:	c/o Meridian Trust Company of California 650 California Street, 8th Floor San Francisco, CA 94108
Lessee:	APL Land Transport Services, Inc. 1111 Broadway Oakland, CA 94607
Indenture	First Security Bank of Utah,
Trustee:	National Association 79 South Main Street Salt Lake City, UT 84111

A description of the railroad equipment leased under the Lease Agreement is as follows:

Twelve (12) units bearing identification marks APLX 4715 through APLX 4726 and thirty-four (34) units bearing identification marks APLX 4840 through APLX 4862, and APLX 4864 through 4874, in each case of five-platform, 125 ton, double-stack container railcars.

Also enclosed is a check in the amount of \$84.00 to cover the required recordation fee.

Please deliver one original counterpart of each of the foregoing documents, date-stamped by the Commission to the representative of Sidley & Austin who is delivering this letter and said enclosures to you.

A short summary of the Lease Agreement and Lease Supplement No. 1 to appear in the Index maintained by the Interstate Commerce Commission follows:

Lease Agreement dated as of November 15, 1994 between Meridian Trust Company, c/o Meridian Trust Company of California, 650 California Street, 8th Floor, San Francisco, CA 94108 ("Owner Trustee"), and APL Land Transport Services, Inc., 1111 Broadway, Oakland, CA 94607 ("Lessee"), and Lease Supplement No. 1 dated November 21, 1994 between Owner Trustee and Lessee, covering 12 units bearing identification marks and numbers APLX 4715 through APLX 4726 and 34 units bearing identification marks and numbers APLX 4840 through APLX 4862, and APLX 4864 through 4874, in each case of five-platform, 125-ton, double-stack container railcars.

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A short summary of the Trust Indenture and Security Agreement and Indenture Supplement No. 1 to appear in the Index maintained by the Interstate Commerce Commission follows:

Trust Indenture and Security Agreement dated as of November 15, 1994 between Meridian Trust Company, c/o Meridian Trust Company of California, 650 California Street, 8th Floor, San Francisco, CA 94108 ("Owner Trustee"), and First Security Bank of Utah, National Association, 79 South Main Street, Salt Lake City, UT 84111, as indenture trustee ("Indenture Trustee") and Indenture Supplement No. 1 dated November 21, 1994 between Indenture Trustee and Owner Trustee, covering 12 units bearing identification marks and numbers APLX 4715 through APLX 4726 and 34 units bearing identification marks and numbers APLX 4840 through APLX 4862, and APLX 4864 through 4874, in each case of five-platform, 125-ton, double-stack container railcars.

APL LAND TRANSPORT SERVICES, INC.

By: G. Paul Moates
G. Paul Moates
Sidley & Austin
Attorneys for APL LAND
TRANSPORT SERVICES, INC.

CERTAIN RIGHTS OF LESSOR UNDER THIS LEASE OF RAILROAD EQUIPMENT HAVE BEEN ASSIGNED AS SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE UNDER THE TRUST INDENTURE AND SECURITY AGREEMENT DATED AS OF THE DATE HEREOF AMONG LESSOR AND INDENTURE TRUSTEE, FOR THE BENEFIT OF LOAN PARTICIPANT. THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. ONLY THE ORIGINAL COUNTERPART MARKED "ORIGINAL COUNTERPART NO. 1" AND BEARING THE RECEIPT THEREFOR EXECUTED BY FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, ON THE SIGNATURE PAGE THEREOF SHALL CONSTITUTE CHATTEL PAPER WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE. SEE SECTION 24 HEREOF FOR INFORMATION CONCERNING THE RIGHTS OF INDENTURE TRUSTEE OF THE VARIOUS COUNTERPARTS OF THIS LEASE OF RAILROAD EQUIPMENT.

LEASE OF RAILROAD EQUIPMENT

Dated as of November 15, 1994

NOV 21 1994-1 00 PM

between

MERIDIAN TRUST COMPANY,

not in its individual capacity, but solely as
Owner Trustee,
as Lessor

and

APL LAND TRANSPORT SERVICES, INC.,
Lessee

ALTSI TRUST 94-B

DOUBLE-STACK CONTAINER CARS

NOTICE IS HEREBY GIVEN TO ALL CONTRACTORS, SUBCONTRACTORS, LABORERS, MATERIALMEN AND OTHER PERSONS THAT LESSOR WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO LESSEE AND THAT NO LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT LESSOR'S INTEREST IN THE UNITS.

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LEASE OF RAILROAD EQUIPMENT

THIS LEASE OF RAILROAD EQUIPMENT dated as of November 15, 1994 between Meridian Trust Company, a Pennsylvania trust company, not in its individual capacity but solely as Owner Trustee, as lessor ("*Lessor*"), and APL LAND TRANSPORT SERVICES, INC., a Tennessee corporation, as lessee ("*Lessee*").

W I T N E S S E T H :

SECTION 1. INTERPRETATION

1.1 **Definitions.** Capitalized terms and phrases used and not otherwise defined herein shall for all purposes of this Lease have the respective meanings specified therefor in Annex A hereto.

1.2 **Rules of Interpretation.** The following rules apply to this Lease:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) "*or*" is not exclusive and "*include*" and "*including*" are not limiting;
- (iii) a reference to any agreement or other contract includes permitted supplements and amendments;
- (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor;
- (v) a reference to a Person includes its permitted successors and assigns;
- (vi) a reference herein to an Article, Section, Exhibit, Schedule or Appendix without further reference is to the relevant Article, Section, Exhibit, Schedule or Appendix of this Lease;
- (vii) any right may be exercised at any time and from time to time;
- (viii) all obligations are continuing obligations; and
- (ix) the headings of the Articles, Sections and subsections are for convenience and shall not affect the meaning of this Lease.

SECTION 2. AGREEMENT TO LEASE; DELIVERY AND ACCEPTANCE

2.1 **Agreement to Lease.** Lessor and Lessee agree (subject to satisfaction or waiver by Lessor or Lessee, as the case may be, of the conditions precedent to its obligations set forth in Section 5 of the Participation Agreement) to subject each Unit to this Lease for the rent and upon and subject to the terms and conditions herein set forth, for the Lease Term with respect to such Unit, commencing on the date of delivery of a fully executed Lease Supplement with respect to such Unit.

2.2 **Delivery and Acceptance.** Upon delivery by Lessor and Lessee of a fully executed Lease Supplement, the Units described therein shall be deemed to have been delivered to and accepted by Lessee for all purposes of this Lease and thereupon shall be subject to all the terms and conditions of this Lease, notwithstanding any defect with respect to the design, manufacture, condition or any other matter or the failure of any of the Units to comply with the specifications applicable thereto or with any applicable United States Department of Transportation or ICC requirements and specifications or AAR recommended standards for new railroad equipment of the character of the Equipment as of the date thereof. Lessee's execution and delivery of a Lease Supplement shall be conclusive proof that the Units listed therein have been subjected to this Lease on the terms hereof.

SECTION 3. INTERIM TERM AND BASE LEASE TERM

The Interim Term for any Unit shall commence on the Closing Date therefor and shall extend to (but not include) the Base Lease Commencement Date for such Unit or such earlier date on which this Lease shall be terminated pursuant to the terms hereof with respect to such Unit. The Base Lease Term for any Unit shall commence on the Base Lease Commencement Date for such Unit and end on the Base Lease Expiration Date for such Unit, or such earlier date on which this Lease shall be terminated pursuant to the terms hereof with respect to such Unit.

SECTION 4. RENT

4.1 Base Rent.

(i) **Base Rent During Interim Term.** On the Base Lease Commencement Date for each Unit, Lessee shall pay to Lessor, as Base Rent for such Unit for the period from and including the Closing Date for such Unit to and excluding the Base Lease Commencement Date for such Unit an amount equal to the excess, if any, of (a) the Interim Amount over (b) such Interim Amount actually paid by Lessor on such Base Lease Commencement Date.

(ii) **Base Rent During Base Lease Term.** Lessee shall pay to Lessor, as Base Rent for each Unit, semi-annual installments of Base Rent on the Rent Payment Dates for such Unit during the Base Lease Term. Subject to adjustment as provided herein, the Base Rent due on a Rent Payment Date with respect to any Unit is equal to the product of (a) the applicable Rent

Factor applicable to such Unit for such Rent Payment Date and (b) Equipment Cost for such Unit. If any Rent Payment Date is also a Casualty Value Determination Date with respect to a Unit, such Unit shall be deemed to be subject to this Lease within the meaning of the definition of "Equipment Cost" for purposes of determining any Base Rent due on such date.

(iii) Minimum Payments. Notwithstanding anything to the contrary contained herein or in any other Operative Document, in all events and irrespective of any adjustment thereto, (a) each installment of Base Rent shall be at least in an amount such that, as and when received by Indenture Trustee, it shall be sufficient to pay the installment of principal and accrued interest in respect of all Secured Notes then Outstanding under the Indenture which is due on the Rent Payment Date of such installment of Base Rent, and (b) each amount of Casualty Value payable on a Casualty Value Determination Date, any payment of Special Purchase Price in connection with a purchase pursuant to Section 16.1, and each amount payable on any Termination Date with respect to a Voluntary Termination, together in each case with any Base Rent due on such Date, shall be at least in an amount such that, as and when received by Indenture Trustee, Indenture Trustee shall have sufficient amounts remaining (after payment of all obligations having higher priority under the Indenture) to pay the full unpaid balance of principal and interest then due and payable in respect of the Secured Notes then Outstanding to be prepaid in accordance with the Indenture in connection with the applicable Casualty Occurrence, purchase or Voluntary Termination, as the case may be. Nothing in this Section 4.1(iii) shall be deemed to constitute a guarantee by Lessee of the indebtedness evidenced by the Secured Notes or a guarantee of the residual value of any Unit or an indemnity for any Taxes required to be deducted or withheld.

4.2 Supplemental Rent. In addition to its obligation to pay Base Rent or Renewal Rent hereunder, Lessee shall pay (or cause to be paid) Supplemental Rent to Lessor or to whomever shall be entitled thereto, as and when the same shall become due and owing in accordance with the provisions of the Operative Document that requires such payment. Lessee also agrees to pay to Lessor or such other Person as shall be entitled thereto with the payment to which it relates, without necessity of demand, as Supplemental Rent (i) to the extent permitted by applicable law, interest at the Overdue Rate on (a) any part of any installment of Base Rent or Renewal Rent, as the case may be, not paid when due for each day for which the same shall be overdue and (b) any payment of Supplemental Rent (other than such interest) not paid when due for each day for which the same shall be overdue, until the same shall be received by the party entitled thereto and (ii) an amount equal to any premium or Make-Whole Amount in respect of the Secured Notes payable in connection with any provision of the Operative Documents, including without limitation, a mandatory prepayment under Section 6.02 of the Indenture or refunding pursuant to Section 14.7 of the Participation Agreement or a voluntary termination of the Lease pursuant to Section 26.1 hereof (except as expressly provided therein).

4.3 Adjustments to Rent Factors, Special Purchase Price and Casualty Value Factors. Subject to Section 4.1(iii), Rent Factors, Special Purchase Price and Casualty Value Factors shall be adjusted in accordance with Section 16 of the Participation Agreement.

4.4 **Manner of Making Payments; Payment to Indenture Trustee.** All payments pursuant to this Lease shall be made by 10:00 a.m. San Francisco, California time on the date payment is due in U.S. Dollars in immediately available funds. Any payment not made on the date and at the time payment is due shall be payable with interest at the Overdue Rate as provided in Section 4.2. If any such date is not a Business Day, then payment shall be due on the next succeeding Business Day and if paid on such Business Day, such payment shall be without interest or penalty. All payments of Rent (other than Excepted Payments, which shall be paid to the Person entitled thereto) shall be paid by Lessee to Lessor at its office at 650 California Street, 8th Floor, San Francisco, California 94108, or as Lessor may otherwise direct from time to time in writing; provided, that so long as the Indenture shall not have been discharged pursuant to Article XI thereof, Lessor hereby directs, and Lessee agrees, that all payments of Rent and all other amounts payable to Lessor hereunder (other than Excepted Payments, which shall be paid to the Person entitled thereto) shall be paid by wire transfer or other commercially acceptable, generally used electronic medium directly to Indenture Trustee at First Security Bank of Utah, National Association., 79 South Main Street, Salt Lake City, Utah 84111 (A.B.A. No. 124000012), Account No. 0510922115, Attn: Corporate Trust Department, Re: ALTSI, or as Indenture Trustee may otherwise direct in a writing received by Lessee at least ten (10) Business Days prior to the applicable payment date.

SECTION 5. NET LEASE; NONTERMINABILITY

5.1 Net Lease.

(i) This Lease is a net lease, and, as between Lessee and Lessor, it is intended that Lessee shall pay all costs and expenses of every character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the Units, whether with respect to construction, delivery, ownership, use, possession, control, operation, maintenance, repair, insurance, improvement and return of the Units, or otherwise, including the costs and expenses particularly set forth in this Lease. All obligations of Lessee in this Lease shall be done, performed or complied with at Lessee's cost and expense, unless otherwise expressly stated.

(ii) Subject to Section 5.2(iv) and without limiting the generality of the foregoing, Lessee covenants that it will remain obligated under this Lease in accordance with its terms, and will not take any action to terminate (except in accordance with the express provisions of the Operative Documents), rescind or avoid this Lease for any reason, notwithstanding any insolvency, bankruptcy, reorganization or other proceeding affecting Lessor or Owner Participant, or any property of Lessor or Owner Participant, or any action which may be taken by any receiver, trustee or liquidator (or other similar official) or by any court.

5.2 Nonterminability.

(i) Each of Lessee's obligations to pay Rent hereunder shall be absolute and unconditional, and Lessee shall not be entitled to any abatement, deferral or suspension of Rent (except as provided in Section 9.6 of the Participation Agreement), reduction thereof or setoff against Rent, including abatements, reductions, deferrals, suspensions or setoffs due, or alleged to

be due, by reason of any past, present or future claims of Lessee against Lessor, Owner Participant, Manufacturer, Indenture Trustee or any other Person, either under this Lease, any other Operative Document or otherwise; nor, except as otherwise expressly provided herein and on the terms hereof, shall this Lease terminate, or the obligations of Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any Liens or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any Person (including confiscation, requisition or other taking by any governmental authority, any Person acting under governmental authority or otherwise, or action of any public or private Person, whether by eviction by paramount title or for any other reason whatsoever), the invalidity or unenforceability or lack of due authorization of this Lease or any other Operative Document, any action or inaction by Lessor as lessor under this Lease, any defect in the title to, compliance with plans or specifications for, condition, design or fitness for use of all or any of the Units, any insolvency of or any bankruptcy, reorganization or other proceeding against Lessee, Lessor or any other Person, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention and agreement of the parties hereto, and the basis of the bargain, that (to the extent permitted by applicable law) Base Rent, Renewal Rent, Supplemental Rent and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless and until the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease (in the case of any return of the Equipment to Lessor, any Unit shall not be deemed to have been returned to Lessor's possession until all of Lessee's obligations with respect to the return, transportation and arranging for storage thereof have been performed). To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel or quit this Lease or surrender any of the Units except in accordance with the express terms hereof. Except as provided in the Tax Indemnity Agreement and Section 6 of the Participation Agreement with respect to certain payments of Supplemental Rent, each Base Rent, Renewal Rent, Supplemental Rent or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment (except for any excess payment made in manifest error) from Lessor, Owner Participant, Indenture Trustee or any holder or former holder of a Secured Note for any reason whatsoever.

(ii) Without limiting the generality of the foregoing, Lessee covenants that it will remain obligated under this Lease in accordance with the terms hereof and will not take any action to terminate (except in accordance with the express provisions hereof), rescind or avoid this Lease for any reason whatsoever.

(iii) Lessee agrees that it will duly perform and observe all the covenants, agreements and obligations on its part to be performed and observed under the Participation Agreement and under each of the other Operative Documents to which it is a party.

(iv) Nothing in this Section 5.2 or in any other provision of this Lease shall preclude any separate, independent claim (other than by way of abatement or reduction of any

amount at any time payable by Lessee hereunder) by Lessee for the breach of any representation, covenant, undertaking or agreement made herein and in any other Operative Document for the benefit of Lessee by Lessor or Owner Participant.

SECTION 6. IDENTIFICATION MARKS

Lessee will cause each Unit to be kept numbered with the road number as shall be set forth in any Lease Supplement hereto covering such Unit. Lessee shall not allow the name of any Person other than Lessor or Owner Participant to be placed on any Unit as a designation that might be identified as a claim of ownership or any other interest therein; provided, however, that nothing herein contained shall prohibit Lessee or its permitted sublessees from placing its name, customary colors and insignia on any Unit or from naming each Unit. Lessee will not change the identification number of any Unit unless and until a statement of a new number or numbers to be substituted therefor shall have been delivered to Indenture Trustee, Owner Participant and Lessor and filed, recorded and deposited by Lessee in all appropriate public offices, including the public offices where this Lease and the Indenture shall have been filed, recorded and deposited. Lessee shall keep and maintain, plainly, distinctly and conspicuously marked by a decal or stencil printed in contrasting colors on each Unit, a legend substantially as follows:

"OWNERSHIP SUBJECT TO SECURITY AGREEMENT FILED WITH THE
INTERSTATE COMMERCE COMMISSION"

; provided, that with respect to any Unit which does not have such legend as of the date such Unit is delivered and accepted under this Lease, Lessee shall mark such Unit with the legend required above at the earliest time that such Unit undergoes any maintenance or repair work.

SECTION 7. CASUALTY

7.1 **Notice; Elections.** Lessee shall notify Lessor, Indenture Trustee and Owner Participant (i) of a Casualty Occurrence within thirty (30) days of a Responsible Officer of Lessee acquiring actual knowledge thereof; and (ii) at least thirty (30) days prior to the Casualty Value Determination Date with respect thereto (a) of the number of Units for which such Casualty Occurrence has occurred, and (b) whether Lessee intends to proceed in accordance with Section 7.2 or 7.3 for each such Unit, respectively; provided, however, that Lessee's failure to provide such notice of election shall constitute an election to proceed in accordance with Section 7.3; and provided, further, that no election to proceed in accordance with Section 7.2 shall be effective if a Specified Default or a Lease Event of Default has occurred and is continuing.

7.2 Substitution.

(i) If pursuant to Section 7.1 Lessee shall have elected to proceed in accordance with this Section 7.2 with respect to a Unit that has suffered a Casualty Occurrence, Lessee shall not later than the Casualty Value Determination Date for such Unit convey or cause to be conveyed to Lessor a Replacement Unit, title to which shall immediately vest in Lessor,

without further act or deed, free and clear of all Liens other than Permitted Liens, to be leased to Lessee hereunder.

(ii) Prior to or at the time of any substitution under Section 7.2(i) or Section 12.3, Lessee, at its own cost and expense, shall (a) furnish Lessor with a full warranty bill of sale and an assignment of warranties with respect to the Replacement Unit, (b) furnish Lessor with an opinion of Lessee's counsel (which may be Lessee's General Counsel), to the effect that (x) the bill of sale referred to in clause (a) above constitutes an effective instrument for the conveyance of title to the Replacement Unit to Lessor, and (y) all filings, recordings and other action necessary or appropriate to perfect and protect the Lessor's and the Indenture Trustee's respective interests in the Replacement Unit have been accomplished, (c) cause a Lease Supplement and Indenture Supplement covering the Replacement Unit to be prepared and, promptly upon execution thereof by Lessee and Lessor, in the case of a Lease Supplement, and Lessor and Indenture Trustee, in the case of an Indenture Supplement, filed for recording with the ICC and in all other public offices where this Lease shall be filed, recorded or deposited, (d) furnish Lessor and Indenture Trustee with evidence of compliance with the provisions of Section 8 with respect to such Replacement Unit; (e) cause a Uniform Commercial Code financing statement or statements covering the Replacement Unit to be filed in such place or places as are deemed necessary or desirable by Lessor or Indenture Trustee to perfect their respective interests therein under the Operative Documents; and (f) furnish Lessor with a certificate of a Responsible Officer certifying that the Replacement Unit has a current fair market value, residual value, utility and remaining useful life at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Lease) and setting forth a reasonable basis for such conclusion. In connection with such substitution, Lessee shall prepare and Lessor shall execute or forward to Indenture Trustee for execution, as the case may be, a release of the replaced Unit from the Lien of the Indenture (including Uniform Commercial Code amending statements).

(iii) Upon compliance by Lessee with the foregoing provisions of this Section 7.2, (a) Lessor shall promptly convey the replaced Unit to Lessee "as-is," "where-is" and "with all faults," and without recourse, representation or warranty, express or implied, as to any matter whatsoever except as to the absence of all Lessor's Liens; (b) Lessee shall be subrogated to all claims of Lessor, if any, against third parties for damage to or loss of the replaced Unit to the extent of any casualty insurance proceeds received or receivable in respect of such Unit as a result of such Casualty Occurrence under insurance policies maintained by Lessee or any sublessee; and (c) for all purposes hereof and the other Operative Documents, the Replacement Unit shall be deemed part of the property leased hereunder and shall be deemed a "Unit" as defined herein.

(iv) Notwithstanding any provision to the contrary set forth in this Lease or in any other Operative Document, each Replacement Unit substituted for (a) a First Closing Date Unit, shall constitute a First Closing Date Unit and (b) a Second Closing Date Unit, shall constitute a Second Closing Date Unit, in each case for all purposes of the Operative Documents.

7.3 Payment of Casualty Value. If pursuant to Section 7.1 Lessee shall have elected or have been deemed to have elected to proceed in accordance with Section 7.3 with

respect to a Unit that has suffered a Casualty Occurrence, Lessee shall pay to Lessor, on the Casualty Value Determination Date with respect to such Unit or Units suffering a Casualty Occurrence, (A) the Casualty Value for such Unit determined in accordance with Section 7.5 as of such Casualty Value Determination Date, (B) any Supplemental Rent due on such Casualty Value Determination Date in respect of such Unit and (C) all other amounts due hereunder with respect to such Unit, including Base Rent due on or before such Casualty Value Determination Date (other than any Base Rent payable in advance on such Casualty Value Determination Date). The sum of the amounts described in clauses (A), (B) and (C) of the immediately preceding sentence, is hereinafter referred to as an "*Aggregate Casualty Payment*". Upon the making of such Aggregate Casualty Payment, the Base Rent for the applicable Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and Lessee shall be entitled to recover possession of such Unit. Lessor shall transfer to Lessee such right, title and interest, if any, as Lessor may have in such Unit, "as-is, where-is and with all faults" and without recourse, representation or warranty, express or implied, as to any matter whatsoever except that the Unit is free and clear of all Lessor's Liens. Upon the making of the Aggregate Casualty Payment, Lessee shall be entitled to receive and retain for its own account all or that portion of any excess condemnation or requisition payments paid in respect of such Unit necessary to (x) reimburse Lessee for the Casualty Value paid in respect of such Unit, and (y) reimburse Lessee for its loss of use of such Units as a result of such requisition or condemnation as measured by (1) the net present value of all costs and expenses of leasing equipment in replacement of such Unit which are in excess of the cost of leasing such Unit under this Lease, and (2) if and to the extent Lessee was unable to lease equipment in replacement of such Unit, the net present value amount of any reduction in Lessee's net operating revenues attributable to such condemnation or requisition and any resulting loss of use of any Unit as a result thereof. Any remaining amounts of such excess condemnation or requisition payments shall be paid to Lessor.

7.4 Requisition Not Constituting a Casualty Occurrence. In the event of the requisition for use of any Unit which does not, or does not yet, constitute a Casualty Occurrence hereunder, all of Lessee's obligations under this Lease with respect to such Unit (including the obligation to make all payments of Base Rent and Supplemental Rent) shall continue to the same extent as if such requisition had not occurred. All payments received by Lessor or Lessee from the United States government or any other governmental entity for the use of such Unit during the term of this Lease (other than a use of such Unit constituting a Casualty Occurrence) shall be paid over to, or retained by, Lessee if no Specified Default or Lease Event of Default shall have occurred and be continuing, and if a Specified Default or Lease Event of Default shall have occurred and be continuing all such payments shall be paid to Indenture Trustee (unless the Indenture has terminated in accordance with its terms) and otherwise to Lessor to be held as security for Lessee's obligations hereunder.

7.5 Amount of Casualty Value. During the Interim Term and the Base Term the "*Casualty Value*" for a Unit as of any Casualty Value Determination Date shall be (i) the Equipment Cost of such Unit multiplied by (ii) the applicable Casualty Value Factor for such Unit and for such Casualty Value Determination Date. The "*Casualty Value*" for each Unit (a) during any Fair Market Renewal Term shall decrease on a straight-line basis from the Fair Market Value

of the applicable Units on the first day of the Renewal Term to the Fair Market Value of such Units on the last day of the Renewal Term as determined in accordance with Section 16.5 and (b) during any Fixed Rate Renewal Term shall decrease on a straight-line basis from the Casualty Value on the Base Lease Expiration Date on the first day of the Renewal Term to the Fair Market Value of such Units on the last day of the Renewal Term as determined in accordance with Section 16.5, but in no event shall the Casualty Value during the term of the Fixed Rate Renewal Term be less than twenty percent (20%) of the Equipment Cost for the Units subject to such Fixed Rate Renewal Term. The "*Casualty Value*" of any Unit for purposes of Annex B shall equal the greater of (x) the Casualty Value determined as of the expiration of the Base Lease Term or Renewal Term, as applicable, and (y) the Fair Market Value of such Unit at the time of the deemed Casualty Occurrence pursuant to Annex B.

7.6 **No Release.** Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation or requisition, partial or complete, of or to each Unit, however caused or occasioned, such risk to be borne by Lessee with respect to each Unit from and after delivery and acceptance thereof by Lessee hereunder, and continuing until the expiration or early termination of the Lease Term with respect to such Unit. Except as provided in Section 7.3 with respect to the payment of Base Rent and Section 17, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by Lessee hereunder.

SECTION 8. INSURANCE.

8.1 Insurance to Be Maintained.

(i) Lessee will, at all times prior to the return to Lessor of the Units pursuant to the terms hereof (and in any event while the Units are being collected for delivery to Lessor and as provided in Sections 14 and 17) and at Lessee's own expense (except as otherwise provided in Section 17), cause the following insurance to be carried and maintained:

(a) "all risk" property insurance in respect of the Units ("*Property Insurance*"); and

(b) liability insurance with respect to third-party personal injury, death and property damage and against such risks as is insured against by Lessee in respect of other railcars owned or leased by Lessee similar to the Units ("*Liability Insurance*");

in such amounts, covering such risks and with such terms, including self-insurance (for purposes of this Section 8.1, "*self-insurance*" and "*self-insure*" shall mean uninsured risk, deductibles and co-insurance) as is generally consistent with prudent Class I railroad standards and practices and in any event not less than Lessee customarily maintains for similar equipment under its risk management programs in effect from time to time; provided, that, at any time that the senior unsecured long-term notes of or guaranteed by Guarantor are rated below BB- by Standard & Poor's Corporation or the equivalent rating by Moody's Investor's Services, Inc., Lessee shall

(x) not self-insure in amounts in excess of \$2,000,000 per occurrence, (y) maintain Property Insurance in amounts at least equal to the Casualty Value for the Equipment, and (z) maintain Liability Insurance in an amount at least equal to \$50,000,000 per occurrence, in each case, subject to the self-insurance limits then applicable under clause (x) above.

(ii) Lessee shall, prior to the Closing Date, furnish Lessor with a certificate signed by the insurer or Lessee's insurance broker showing the insurance then maintained by Lessee pursuant to this Section 8.1 and that all premiums therein have been paid. Not later than forty-eight (48) hours prior to the expiration of any Liability Insurance or Property Insurance required to be carried hereunder, Lessee shall provide Lessor, Owner Participant and, so long as Secured Notes are outstanding, Indenture Trustee and Loan Participant with certificates of insurance evidencing that such insurance has been replaced or renewed in compliance with this Section 8.1 or an Officer's Certificate of Lessee stating whether Lessee intends to renew or replace such Liability Insurance or Property Insurance, as the case may be, in compliance with this Section 8.1. If Lessee shall have provided such an Officer's Certificate in lieu of such certificates of insurance, Lessee shall facilitate requests of Lessor to verify that the applicable Insurance has been renewed or replaced and in any event shall provide the parties referred to in the preceding sentence with such a certificate of insurance within 30 days after the expiration of the policies of such Insurance to be renewed or replaced.

(iii) The insurance policies carried in accordance with the terms of this Lease shall, to the extent available on a commercially reasonable basis, as measured by the then current prudent Class I railroad industry practice:

(a) require thirty (30) days' prior notice of cancellation for any reason or material change in the types or limits of coverage to the Additional Insureds;

(b) not require contributions from other policies held by the Additional Insureds;

(c) waive any right of subrogation of the insurers against the Additional Insureds;

(d) in respect of any liability of any of the Additional Insureds, except for salvage rights in the event of a Casualty Occurrence, waive the right of insurers to set-off, to counterclaim or to any other deduction, whether by attachment or otherwise, to the extent of any monies due the Additional Insureds;

(e) name the Additional Insureds (1) as additional insureds, as their respective interests may appear, in the case of Liability Insurance, and (2) as loss payees, as their respective interests may appear, in the case of Property Insurance, (provided, that such Property Insurance shall be made payable to Indenture Trustee under a standard mortgage loss payable clause meeting the further provisions hereof and satisfactory to Lessor and Indenture Trustee, unless and

until Secured Notes cease to be Outstanding, at which time such insurance shall be made payable to Lessor);

(f) continue to insure the Additional Insureds regardless of any breach or violation of any warranty, declaration, or condition contained in such policy by Lessee or any other Person;

(g) waive any right to claim any premiums or commissions against the Additional Insureds; and

(h) provide that the insurers will promptly notify the Additional Insureds in writing of any default in the payment of any premium or any other act or omission on the part of Lessee of which they shall have knowledge which might entitle the insurers to cancel the policies.

(iv) If Lessee is in default of its obligation to maintain the insurance coverages specified herein when such coverages are available on a commercially reasonable basis, as measured by current prudent Class I railroad industry practice, each of the Additional Insureds may, at its option, but shall not be required to, provide such insurance (but without duplication of any such insurance obtained by any other Additional Insured pursuant to this Section 8.1(iv) or by Lessee), and in such event, Lessee shall, upon demand from time to time, reimburse such Additional Insured for the cost to such Additional Insured of such insurance which Lessee shall have failed to maintain and which such Additional Insured shall have obtained in accordance herewith together with interest thereon at the Overdue Rate, from the date of payment thereof to but excluding the date of receipt of such reimbursement.

(v) Nothing in this Section 8.1 shall prohibit Lessor, Owner Participant, Indenture Trustee or a holder of a Secured Note from obtaining insurance for its own account and any proceeds payable thereunder shall be as provided in the insurance policy relating thereto; provided, that no such insurance may be obtained that would limit or otherwise adversely affect the coverage of any insurance to be obtained or maintained by Lessee pursuant to this Section 8.1, it being understood that all salvage rights to the Units in the event of a Casualty Occurrence shall remain with Lessee or its insurers at all times.

(vi) Lessee shall provide certificates of insurance evidencing that the insurance required by Section 8.1 is in effect as to Lessor, Owner Participant, Loan Participant and Indenture Trustee on or prior to June 30 of each calendar year, commencing June 30, 1995, to each of Lessor, Owner Participant, Loan Participant and Indenture Trustee.

8.2 Insurance Proceeds. So long as no Lease Event of Default has occurred and is continuing, Lessee shall be entitled to receive all proceeds of Property Insurance (except under policies described in Section 8.1(v)) and third party payments in respect of any Unit suffering a Casualty Occurrence. Lessee shall be entitled to retain all such proceeds and third-party payments up to the Aggregate Casualty Payment set forth in Section 7.3, but only if such Aggregate Casualty Payment shall have been previously paid to and received by Lessor or

Indenture Trustee, as the case may be. All such proceeds or payments, if any, in excess of Casualty Value shall be paid to, or retained by, Lessee. So long as no Specified Default or Lease Event of Default has occurred and is continuing, all Property Insurance proceeds (except under policies described in Section 8.1(v)) or third party payments in respect of any Unit not suffering a Casualty Occurrence in respect of which Unit Lessee has elected to repair shall be paid to Lessee to reimburse Lessee for the costs of repairing, restoring or replacing the damaged Unit. During the continuance of any Specified Default or Lease Event of Default, all such Property Insurance proceeds or third-party payments shall be held by Lessor or Indenture Trustee and paid to Lessee upon a written application signed by Lessee to reimburse Lessee for the costs of repairing, restoring or replacing the damaged Units. Any amounts so held by Lessor or Indenture Trustee (which amounts shall be held by Lessor or Indenture Trustee, as the case may be, as security for the obligation of Lessee to make such repairs) and any proceeds or payments (and net earnings thereon) remaining after such repairs have been made shall be paid to Lessee. Any such amounts which are held by Lessor or Indenture Trustee, as the case may be, pending payment to Lessee shall, until paid to Lessee as provided herein or, as long as the Indenture is in effect, until applied as provided in the Indenture, be invested by Lessor or Indenture Trustee, as the case may be, as directed from time to time in writing by and at the expense and risk of Lessee in Permitted Investments. Any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) shall be applied or reinvested in the same manner as the principal invested. The proceeds of any Liability Insurance shall be paid to or for the account of Lessee and the Additional Insureds as their interests may appear.

SECTION 9. INSPECTION

At all reasonable times, Lessor, Owner Participant, Indenture Trustee or their respective authorized representatives shall each have the right at its own risk and expense and upon reasonable prior notice to Lessee to inspect any Unit and all records pertaining to such Unit; provided that, except during the continuance of any Lease Event of Default (other than with respect to Section 9(iv)(b) below which shall be applicable at all times) (i) no exercise of such inspection right shall interfere with the normal operation or maintenance of such Unit by, or the business of, Lessee (or any sublessee), (ii) Lessee (and any sublessee) incurs no out-of-pocket expenses not reimbursed by Lessor, Owner Participant or Indenture Trustee, as the case may be, (iii) Lessor, Indenture Trustee and Owner Participant shall hold confidential all information obtained thereby in accordance with the terms of Section 14.9 of the Participation Agreement, and (iv) all inspections shall (a) occur during Lessee's (and any sublessee's) normal business hours, and (b) be subject to Lessee's (or any sublessee's) normal conditions for such inspections including security and safety rules and procedures. During the continuance of any Lease Event of Default, any such inspection shall be at the expense of Lessee. None of Lessor, Indenture Trustee, Owner Participant or any other Person shall have any duty to make any such inspection or shall any of them incur any liability or obligation by reason of not making any such inspection.

**SECTION 10. LESSOR'S REPRESENTATIONS AND WARRANTIES;
DISCLAIMER OF WARRANTIES; QUIET
ENJOYMENT**

10.1 **Disclaimer.** LESSEE AGREES THAT IT LEASES THE EQUIPMENT AS-IS, WHERE-IS, WITH ALL FAULTS, AND IN WHATEVER CONDITION IT MAY BE. NEITHER LESSOR (WHETHER ACTING IN ITS INDIVIDUAL CAPACITY OR AS TRUSTEE), OWNER PARTICIPANT, LOAN PARTICIPANT NOR INDENTURE TRUSTEE MAKES OR HAS MADE, OR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, QUALITY, DURABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE OF THE UNITS, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER LESSOR NOR OWNER PARTICIPANT NOR INDENTURE TRUSTEE SHALL BE LIABLE OR RESPONSIBLE FOR ANY DEFECTS, EITHER PATENT OR LATENT (WHETHER OR NOT DISCOVERABLE BY LESSEE) IN THE UNITS, OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS CAUSED BY LESSEE'S INABILITY TO USE THE EQUIPMENT FOR ANY REASON WHATSOEVER, OTHER THAN WITH RESPECT TO ANY OF LESSOR, OWNER PARTICIPANT, INDENTURE TRUSTEE OR LOAN PARTICIPANT, SUCH PERSON'S BREACH OF ANY OF THE REPRESENTATIONS, WARRANTIES OR AGREEMENTS OF SUCH PERSON IN ANY OPERATIVE DOCUMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE AND ANY RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE THAT MAY LIMIT OR MODIFY LESSOR'S RIGHTS AS DESCRIBED IN THIS LEASE. The Lessee acknowledges that the Units were selected by Lessee on the basis of its own judgment without reliance upon any statements, representations or warranties made by Lessor, Owner Participant, Loan Participant or Indenture Trustee and all such risks specified above, as between Lessor, Trust Company, Owner Participant, Indenture Trustee and the holder of any Secured Note on the one hand and Lessee on the other hand, are to be borne by Lessee. Lessee's delivery of a Lease Supplement relating to a Unit shall be conclusive evidence as between Lessee and Lessor that such Unit is in all respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor, Owner Participant or Indenture Trustee based on any of the foregoing matters. Notwithstanding the foregoing, Lessee shall have the right to assert warranty claims as provided in each Purchase Agreement Assignment. Neither Lessor, Owner Participant, Loan Participant nor Indenture Trustee shall have any responsibility or liability to Lessee or any other Person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the

delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit except, in the case of each of clauses (i) through (iv) above, to the extent such liability or responsibility of any such Person is attributable to such Person's breach of any of the representations, warranties or agreements of such Person in any Operative Document. Lessee's delivery of a Lease Supplement relating to a Unit shall be conclusive evidence as between Lessee and Lessor that Lessee will not assert any claim of any nature whatsoever against Lessor, Owner Participant or Indenture Trustee based on any of the foregoing matters.

10.2 **Quiet Enjoyment.** Lessor covenants that so long as no Lease Event of Default shall have occurred and be continuing, neither it nor any Person acting through it (other than, subject to Section 14.10 of the Participation Agreement, Indenture Trustee or any holder of any Secured Note) will take or cause to be taken any action contrary to Lessee's rights under the Lease or otherwise in any way interfere with the right to the use, possession and quiet enjoyment of the Units by Lessee or any sublessee, assignee or transferee in accordance with the terms hereof.

SECTION 11. LAWS AND RULES

Lessee agrees, for the benefit of Lessor, Owner Participant and Indenture Trustee, to comply in all material respects with all laws, rules or regulations of the United States and any jurisdictions (domestic or foreign) into which its operations involving the Units may extend, the AAR, the United States Department of Transportation, the Federal Railroad Administration, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, in each case to the extent such laws, rules or regulations are applicable to the Units; provided, however, that Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner (and for the payment of which adequate reserves or bonding have been provided) which does not materially and adversely affect the property or rights of Lessor, or any holder of a Secured Note or Indenture Trustee under this Lease or under the Indenture or create any risk of any criminal liability or any material risk of any material civil liability on the part of Lessor, Indenture Trustee, Owner Participant or the holder of any Secured Note or involve any material risk of loss, forfeiture or sale of the Equipment; provided, that no such contest shall continue beyond the end of the Base Term or any Renewal Term then in effect. Lessee shall provide to Lessor, Indenture Trustee, Owner Participant and the holder of any Secured Note notice of each such contest at such time as Lessee shall have initiated such contest, and an acknowledgment that any Claim suffered by any such Person as a result of any determination that Lessee violated any such law, rule or regulation, is covered by Section 6.1 of the Participation Agreement, and Lessee shall keep each such Person informed as to the status and progress of such contest.

SECTION 12. MAINTENANCE AND IMPROVEMENTS; SUBSTITUTION OF UNITS

12.1 **Use and Maintenance.** Lessee (and any permitted sublessee) shall use the Equipment on rail lines in the United States, Canada and Mexico, subject to Section 15.2(iii), in any lawful manner whatsoever, consistent with any of the purposes for which such Equipment

was designed or intended to be used. Lessee agrees that, at its own cost and expense, it will (i) maintain and service each Unit subject to scheduling in the ordinary course of Lessee's maintenance program, so that each Unit is (a) in good working order and good physical condition (ordinary wear and tear excepted), (b) in compliance with the requirements of any insurance policies and Section 11 and in condition and repair suitable for interchange, and (c) in a manner which maintains each Unit's eligibility for all warranties expressly set forth in the Purchase Agreement for such Unit, and (ii) maintain all records, logs and other materials required by the then prevailing Interchange Rules, if applicable, the AAR or the United States Department of Transportation, or any other Governmental Authority having jurisdiction over the Units or Lessee, to be maintained in respect of each Unit. In no event shall any Unit be used, operated or maintained with less care or scheduled for maintenance on a basis less frequent than either the maintenance or maintenance scheduling basis employed by Lessee for similar equipment owned by or operated for or by Lessee. Subject to the preceding sentence and without relieving Lessee of any obligation relating to the physical condition of Units to be returned under Section 17, Lessee may take a Unit out of service while awaiting repair so long as Lessee takes reasonable care to prevent deterioration of the condition of such Unit beyond that attributable to the circumstances necessitating such repair and keeps such Unit otherwise eligible for applicable Manufacturer's warranties expressly set forth in the applicable Purchase Agreement for such Unit and in compliance with Section 11.

12.2 Improvements.

(i) Subject in all events to Sections 11 and 12.1, Lessee, at its own cost and expense, may from time to time make additions, modifications and improvements to any Unit during the Lease Term, provided such additions, modifications and improvements do not impair the current fair market value, residual value, utility or remaining useful life of such Unit. The additions, modifications and improvements made by Lessee under the preceding sentence which are readily severable without causing material damage to such Units, except to the extent such additions, modifications or improvements are otherwise subject to Section 12.2(ii), shall be owned by Lessee. With respect to any Unit which is required to be returned to Lessor under the terms of this Lease, Lessee shall remove each such severable addition, modification or improvement from each such Unit. Lessor shall have the right, prior to the return of such Unit to Lessor hereunder, to purchase any such severable addition, modification or improvement (other than additions, modifications or improvements consisting of proprietary or communications equipment) at their then Fair Market Value. Lessee shall make each improvement, modification and addition to each Unit which is required by any applicable law, rule or regulation, the then prevailing Interchange Rules, if applicable, or by any other applicable regulatory body, for the operation or use of such Unit. All such additions, modifications and improvements shall be properly maintained and serviced by Lessee. Lessor shall grant to Lessee all appropriate approvals, consents and other rights necessary for the efficient installation, operation or removal of any addition, modification or improvement except as otherwise required by Section 12.2(ii).

(ii) Any and all parts installed on and additions, modifications and improvements made to any Units (a) which are replacements of existing parts constituting part of

the Units owned by Lessor, (b) which are not readily removable without causing material damage to such Units, (c) in the course of ordinary and proper maintenance of the Units, or (d) which are required by any applicable law, rule or regulation, the then prevailing Interchange Rules, if applicable, or any other applicable regulatory body, for the operation or use of such Unit, shall constitute accessions to such Unit and title thereto shall immediately, and without further act or instrument vest in Lessor, and such Unit shall be deemed owned by Lessor and subject to this Lease, and Lessee shall comply with all provisions of this Lease, including Section 18, applicable to such accessions.

(iii) Lessee may remove any additions, modifications, or improvements not purchased by Lessor, provided, however, any such additions, modifications or improvements not described in Section 12.2(ii) above and which are not removed shall become the property of Lessor, free of any claim of Lessee, upon delivering the Unit to Lessor.

12.3 Substitution. Subject to the next sentence, at any time prior to the expiration of the Lease Term and upon reasonable notice to Lessor, if Lessee shall have determined in good faith that a valid business reason exists for the substitution of a Unit (which shall not be an inability to locate such Unit) as evidenced by a certificate from an Authorized Officer of Lessee setting forth such valid business reason for such substitution, Lessee may convey or cause to be conveyed to Lessor, in substitution for any Unit, title to (i) a replacement railcar which shall be a forty-eight (48) foot or greater double-stack, articulated well railcar, or (ii) a replacement forty (40) foot or greater double-stack, articulated or nonarticulated intermodal railcar, in each case (a) of the same or newer model year as the Unit to be replaced, (b) free and clear of all Liens and (c) having a current fair market value, residual value, utility and remaining useful life at least equal to the Unit being replaced, assuming such Unit was maintained in the condition required by this Lease. Lessee shall have the right to substitute any number of Units pursuant to Section 12.3(i), but in no event shall Lessee substitute more than seven (7) Units pursuant to Section 12.3(ii) during the Lease Term. For each Unit substituted pursuant to Section 12.3(i) or Section 12.3(ii), in excess of seven (7) Units in the aggregate for all Units substituted pursuant to this Section 12.3, prior to or at the time of any such excess substitution, Lessee shall provide to Lessor a desktop appraisal reasonably satisfactory to Lessor and Indenture Trustee evidencing compliance by each such substitute Unit with the requirements of Section 12.3(i) or Section 12.3(ii), as the case may be. Prior to or at the time of each substitution under this Section 12.3, Lessee shall comply with all of its requirements under Section 7.2(ii), Lessor shall comply with all of its requirements under Section 7.2(iii), Lessee shall have all rights with respect to the replaced Unit as set forth in Section 7.2(iii), and Section 7.2(iv) shall apply to each such substituted Unit.

SECTION 13. LEASE DEFAULT

13.1 Lease Events of Default. The following events shall constitute Lease Events of Default (whether or not any such event or condition shall be voluntary or involuntary, or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any governmental

agency or public authority) and each such event shall continue to be a Lease Event of Default so long as, but only as long as, it shall not have been remedied:

(i) Lessee shall fail to make any payment of Base Rent or Renewal Rent or any payment of Casualty Value (or any payment measured by reference thereto), within ten (10) Business Days after the same shall become due;

(ii) Lessee shall fail to make any payment of Supplemental Rent (other than any failure to make a payment specified in clause (i) above) when due and such failure shall continue for thirty (30) Business Days after Lessee shall have received written notice from Lessor or any other Person entitled to such payment;

(iii) Lessee shall fail to carry and maintain insurance on or with respect to any Unit in accordance with the requirements of this Lease;

(iv) any material representation or warranty made by Lessee or Guarantor herein, in the Participation Agreement or in any other Operative Document to which such Person is a party (other than the Tax Indemnity Agreement) or made by Lessee or Guarantor or any other Person in any certificate or other document delivered by Lessee or Guarantor in connection herewith or therewith shall prove at any time to have been in error in any material respect when made and such error shall be material at the time when the notice referred to below shall have been given to Lessee or Guarantor, as the case may be, and, if capable of cure, shall not have been cured with diligence, within thirty (30) days after written notice thereof to such Person by Lessor, or, if such error is curable but is not capable of being cured within such 30-day period, such longer period not to extend beyond the Lease Term or exceed ninety (90) days after the earlier of (x) such written notice thereof or (y) actual knowledge of such error by any Responsible Officer of such Person, during which such Person shall be diligently attempting to cure such error;

(v) Lessee or Guarantor shall fail to perform or observe any material covenant (other than covenants relating to matters covered by subsections (i), (ii) and (iii) above), condition or agreement to be performed or observed by it hereunder, under the Participation Agreement or in any other Operative Document to which it is a party (other than the Tax Indemnity Agreement), and if such failure is capable of cure and shall not have been cured within thirty (30) days after written notice thereof to Lessee by Lessor, or, if such failure is curable but not capable of being cured, with diligence, within such 30-day period, such longer period not to extend beyond the Lease Term or exceed two hundred seventy (270) days after the earlier of (x) such written notice thereof, or (y) the actual knowledge of such failure by a Responsible Officer of such Person, during which such Person shall be diligently attempting to cure such failure;

(vi) Lessee or Guarantor shall consent to the appointment of a custodian, receiver, trustee or liquidator (or other similar official) of itself or of a substantial part of its property, or shall admit in writing its inability to pay its debts generally as they come due, or a court of competent jurisdiction shall determine that such Person is generally not paying its debts as such debts become due, or such Person shall make a general assignment for the benefit of creditors;

(vii) Lessee or Guarantor shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against such Person in any such proceeding, or such Person shall, by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of debtors, or providing for an agreement, composition, extension or adjustment with its creditors;

(viii) an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent (express or legally implied) of Lessee or Guarantor, a custodian, receiver, trustee or liquidator (or other similar official) of such Person or any substantial part of its property, or sequestering any substantial part of the property of such Person, and any such order, judgment or decree or appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of sixty (60) days after the date of entry thereof;

(ix) a petition against Lessee or Guarantor in a proceeding under applicable bankruptcy laws or other insolvency laws, as now or hereafter in effect, shall be filed and shall not be stayed, withdrawn or dismissed within ninety (90) days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of debtors which may apply to Lessee or Guarantor, any court of competent jurisdiction shall assume jurisdiction, custody or control of such Person or any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of sixty (60) days;

(x) any additional procedure similar to those referred to in subsections (vi), (vii), (viii) or (ix) above, for the relief of financially distressed debtors under applicable laws is entered into by Lessee or Guarantor voluntarily or involuntarily and, if such procedure shall have been entered into involuntarily, shall be unstayed and remain in effect for a period of sixty (60) consecutive days; or

(xi) the Guaranty shall not be in full force and effect or Guarantor shall have repudiated the Guaranty.

13.2 **Remedies.** If a Lease Event of Default shall have occurred and be continuing, then, in any such case, Lessor, at its option, may declare this Lease in default by a written notice to Lessee (provided that Lessor shall be deemed to have declared this Lease in default upon the occurrence of any Lease Event of Default described in Section 13.1(vi), (vii), (viii), (ix) or (x)) and at any time thereafter, Lessor may exercise one or more of the following rights, powers or remedies as Lessor in its sole discretion shall determine to the extent not prohibited by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(ii) by notice in writing to Lessee, terminate this Lease, whereupon all right of Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may demand that Lessee, and Lessee shall, upon written demand of Lessor and at Lessee's expense forthwith return all of the Equipment to Lessor or its order in the manner and condition required by, and otherwise in accordance with, all of the provisions of Section 14;

(iii) sell any Unit at public sale in a commercially reasonable manner, free and clear of any rights of Lessee but subject to the duty to (a) provide Lessee with at least ten (10) days' prior written notice of the time and place of any such sale, and (b) account to Lessee with respect to such sale or for the proceeds thereof as required by paragraph (vi) below, in which event Lessee's obligation to pay Base Rent and other Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Base Rent and other Rent are to be included in computations under paragraph (v) or (vi) below if Lessor elects to exercise its rights under either of said paragraphs);

(iv) hold, keep idle or lease to others any Unit as Lessor in its sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto;

(v) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (i), (ii), (iii) or (iv) above with respect to any Unit, Lessor, by written notice to Lessee specifying a payment date (which date shall be a Casualty Value Determination Date for the purposes of computing Casualty Value) which shall be not earlier than thirty (30) days after the date of such notice, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Base Rent and other Rent for such Unit due after the payment date specified in such notice and any Base Rent payable in advance on such payment date), whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice: (a) an amount equal to the excess, if any, of the Casualty Value for such Unit, over the present value of the Fair Market Rental Value of such Unit or, if Lessor has leased such Unit to others pursuant to paragraph (iv) above, for the period of such lease the

periodic rent payable thereunder, in each case for the remainder of the Base Lease Term or any Renewal Term then in effect, as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a per annum rate of discount equal to the Debt Rate, compounded semi-annually, from the respective dates upon which such rents would be paid; or (b) an amount equal to the excess, if any, of the Casualty Value for such Unit computed as of the payment date specified in such notice over the Fair Market Value of such Unit as of the payment date specified in such notice, and all other Rent then due with respect to such Unit (for the purposes of this Section 13.2(v) hereof, "Fair Market Rental Value" or "Fair Market Value" of any Unit of Equipment shall, in each case, be based upon the actual condition and location of such Unit, taking into account any Liens thereon; provided, that if Lessor is unable to recover possession of any such Unit, the "Fair Market Rental Value" or "Fair Market Value" shall equal zero);

(vi) if Lessor shall have sold any Unit pursuant to paragraph (iii) above, Lessor, in lieu of exercising its rights under paragraph (v) above with respect to such Unit may, if it shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Base Rent and any other Rent for such Unit due subsequent to the Rent Payment Date next preceding such sale and any Base Rent payable in advance on such payment date), any unpaid Base Rent for such Unit arising in any period up to and including the Rent Payment Date next preceding the date of such sale and, if that date is a Rent Payment Date, the Base Rent due on that date (other than any Base Rent payable in advance on such date), plus the amount, if any, by which the Casualty Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale or loss of possession or, if such sale or loss of possession occurs on a Rent Payment Date, then computed as of such Rent Payment Date, exceeds the net proceeds of such sale, plus interest at the Overdue Rate on such amount from such Rent Payment Date to the date of such payments, plus any other Rent then due with respect to such Unit;

(vii) apply to the obligations of Lessee hereunder or under any other Operative Document, in any such order as Lessor shall elect, any amounts held as security hereunder for Lessee's obligations; and

(viii) except as otherwise expressly agreed herein, exercise any other right, power or remedy which may then be available under any of the Operative Documents or which may be available to Lessor under applicable law or proceed by court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

(ix) In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Base Rent and Supplemental Rent due hereunder before or during the exercise of any of the foregoing rights, powers or remedies and for all reasonable legal fees and other costs and expenses incurred by Lessor, Indenture Trustee, Owner Participant or any holder of a Secured Note by reason of the occurrence of any Lease Event of Default or the exercise of any of Lessor's rights, powers or remedies with respect thereto, including all costs and expenses incurred in connection with the surrender of the Units or in placing the Units in the condition required hereby, together, in each case, with interest thereon at the Overdue Rate; provided, that if a Unit

has been sold pursuant to paragraph (ii), (iv) or (vi) above or otherwise, or if Lessee has paid all amounts due and payable with respect to such Unit under paragraph (v) above, Lessee shall have no further obligation under this Lease to pay Base Rent and Supplemental Rent in respect of such Unit except for (a) Lessee's obligation to pay any amounts of Base Rent and Supplemental Rent in respect of such Unit that on the date of sale are due or overdue and that relate to the period on or prior to sale, (b) any obligations with respect to such Unit provided for in paragraph (iii) of this Section 13.2 or Section 14 and (c) the obligation to pay as Supplemental Rent all indemnity payments and other obligations set forth in Sections 6 and 7 of the Participation Agreement or under the Tax Indemnity Agreement; provided, that nothing herein shall expand or diminish the indemnities under Section 6 or 7 of the Participation Agreement or under the Tax Indemnity Agreement.

13.3 **Remedies Not Exclusive.** Except as otherwise expressly agreed herein, the remedies provided in this Lease in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The failure of Lessor, any Owner Participant, Indenture Trustee or any holder from time to time of any Secured Note to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies, or upon the occurrence of any similar contingencies.

SECTION 14. RETURN OF UNITS UPON DEFAULT

14.1 **Return of Units.** Upon the date of notice of termination by Lessor pursuant to Section 13.2(ii), Lessee shall, without expense to Lessor, promptly redeliver the Units, or cause the Units to be redelivered, to Lessor with all reasonable dispatch, in the same manner and in the same condition as if such Units were being redelivered on the last day of the Lease Term in accordance with the provisions of Section 17.1 and Section 17.4, and all obligations of Lessee under Section 17.4 shall apply to such redelivery. Lessor, without further notice, may, but shall be under no obligation to, retake such Units wherever found and take immediate possession of and remove the same by *ex parte* summary proceedings or otherwise without Lessor incurring any liability by reason of such retaking, whether for the restoration of damage to property caused by such retaking or otherwise; provided, however, that nothing herein shall be deemed or construed to constitute a waiver by Lessee of rights accorded debtors under Section 9-503 of the UCC insofar as it relates to proceeding without judicial process.

14.2 **Lessor Appointed Agent of Lessee.** Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 14, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority to exercise Lessee's rights under this Section 14, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whomever shall then be in possession of such Unit.

SECTION 15. ASSIGNMENT, POSSESSION AND USE

15.1 Assignment; Consent; Security for Lessor's Obligations to Indenture Trustee.

(i) In order to secure the indebtedness evidenced by the Secured Notes, the Indenture provides, among other things, for the assignment, by Lessor to Indenture Trustee, of this Lease to the extent set forth therein and for the creation of a first priority security interest in the Trust Indenture Estate in favor of Indenture Trustee. Lessee hereby consents to the assignment by Lessor of Lessor's right, title and interest in and to this Lease to Indenture Trustee pursuant to the terms of, and to the extent set forth in, the Indenture, and agrees that, so long as any Secured Notes are Outstanding, all payments of Base Rent and Casualty Value payable hereunder shall be made to Indenture Trustee as provided in Section 4.4 hereof, or as Indenture Trustee, with the consent of the Owner Participant, may otherwise direct in a writing received by Lessee at least ten (10) Business Days prior to the applicable payment date, and thereafter by wire transfer to an account at such place or to the attention of such Person or department as Lessor may specify from time to time in writing delivered to Lessee not less than ten (10) Business Days prior to the due date of the payment to be made at the place specified in such writing.

(ii) Unless and until Lessee shall have received written notice from Indenture Trustee that the Lien of the Indenture has been released, the terms and provisions of the Indenture shall govern as to whether the consent or agreement of either Lessor or Indenture Trustee, or both, shall be required in order to effect any consent, amendment or modification of, or waive any requirements under, this Lease.

15.2 No Liens; Lessee's Rights to Use the Units, to Permit Use Thereof by Others and to Sublease the Units.

(i) Lessee (a) will not, directly or indirectly, create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to any Unit, any part thereof or the title thereto and (b) at its own expense will promptly discharge any such Lien which arises; provided, that so long as no Lease Event of Default has occurred and is continuing, Lessee may at its own expense in good faith, contest the validity or application of any such Liens in any reasonable manner (and for the payment of which adequate reserves or bonding have been provided) which does not materially and adversely affect the property or rights of Lessor or Indenture Trustee under this Lease or under the Indenture or create any risk of any criminal liability or any material risk of any material civil liability on the part of Lessor, Indenture Trustee, Owner Participant or the holder of any Secured Note or involve any material risk of loss, forfeiture or sale of the Equipment; provided, that no such contest shall extend beyond the end of the Lease Term. Lessee shall notify Lessor, Indenture Trustee, Owner Participant and the holder of any Secured Note of each such contest at such time as Lessee shall have initiated such contest and shall keep each such Person informed as to the status and progress of such contest.

(ii) So long as no Specified Default or Lease Event of Default has occurred and is continuing, subject to the next succeeding sentence, Lessee shall be entitled to enter into a

sublease or assignment for any number of Units without any consent of Lessor or any other Person, subject to all the terms and conditions of this Lease (including the immediately succeeding sentence); provided, that Lessee's obligations hereunder shall continue in full force and effect as the obligations of a principal and not of a surety irrespective of any such sublease. Each sublease and each assignment permitted by this paragraph shall (unless otherwise consented to by Lessor and Indenture Trustee), (a) be expressly subject and subordinate to all of the provisions of this Lease and to the rights and remedies of Indenture Trustee under the Indenture and Lessor under this Lease in respect of the Units covered by such sublease, (b) be for a term not extending beyond the end of the Base Lease Term or the end of the Renewal Term then in effect, and (c) be to an entity organized under the laws of the United States of America or Canada and which is not at such time a debtor under the Bankruptcy Code or any other applicable bankruptcy or insolvency law. Lessee shall provide a copy of each such sublease and assignment with a term greater than one year to Lessor promptly upon the effective date thereof.

(iii) Lessee agrees not to operate or locate any Unit, or to suffer any Unit, by sublease or otherwise, to be operated or located, (a) so as to cause a violation of the first sentence of Section 12.1, (b) in any area (x) outside of the United States, Canada or Mexico; provided, that any use in Mexico shall be subject to subparagraph (c) hereof, or (y) excluded from coverage by any insurance policy required by the terms of Section 8 hereof, except in the case of a requisition for use by the United States Government where Lessee (or any sublessee) has obtained, prior to the operation or location of the Unit in such area, indemnification or insurance in lieu of such indemnification from the United States Government against the risks and in the amounts required by, and in compliance with, Section 8 hereof covering such area, or (c) in Mexico more than thirty-three percent (33%) of the time, based on the average for all of the Units for each calendar year during the Lease Term.

15.3 **Transfers by Lessor.** Lessor shall not transfer its interest in this Lease except in compliance with Section 10 of the Participation Agreement and Article X of the Trust Agreement. No such transfer by Lessor shall interfere with Lessee's rights under this Lease with respect to Lessee's use of the Units.

SECTION 16. PURCHASE OPTIONS; RENEWAL OPTIONS

16.1 Special Purchase Option.

If this Lease has not been earlier terminated, then Lessee may by written notice delivered to Lessor, Owner Participant and Indenture Trustee not less than thirty (30) days prior to any Special Purchase Date, irrevocably elect to purchase on the applicable Special Purchase Date, either (i) any or all Units, and if less than all of the Units, such lesser number which will result in not less than fifteen (15) Units in the aggregate (taking into account all other elections made under this Section 16.1) remaining subject to this Lease (such number of Units to be specified by Lessee and such Units to be randomly selected), or (ii) if a Specified Default or Lease Event of Default has occurred and is continuing, all of the Units then subject to this Lease, in each case, at a purchase price equal to the Special Purchase Price on such Special Purchase Date, payable as set forth in Section 16.4 hereof. Lessee may elect to pay a portion of the purchase

price under this Section 16.1 by causing to be issued in accordance with Section 2.03 of the Indenture, notes having an aggregate principal amount up to the aggregate principal amount of Secured Notes that would have been mandatorily prepaid pursuant to Section 6.02 of the Indenture had Lessee paid such Special Purchase Price entirely in cash. The balance of the Special Purchase Price due on any Special Purchase Date, together with all other Rent then due, shall be paid to Lessor on such Special Purchase Date. The Lease shall terminate and Lessee's exercise of any purchase option under Section 16.1 shall be effective only upon payment in full of the applicable Special Purchase Price on the due date therefor and, if applicable, compliance with Section 2.03 of the Indenture.

16.2 End of Term Options.

So long as no Specified Default or Lease Event of Default has occurred and is continuing, if this Lease has not been earlier terminated, Lessee will have the option on the Base Lease Expiration Date and on the expiration date of each Renewal Term hereunder for a Unit, to elect to purchase such Unit or renew this Lease, in each case, with respect to that number of Units subject to the terms and conditions set forth in Section 16.3 or Section 16.5, as applicable. For Lessee to elect to exercise its options under Section 16.3 or Section 16.5, as applicable, Lessee shall notify Lessor in writing (the "*EOL Option Notice*") of its interest in effecting such options at least two hundred ten (210) days (but not more than two hundred seventy (270) days) prior to the Base Lease Expiration Date or the expiration date of the Renewal Term then in effect, as applicable. Within sixty (60) days of receipt of such notice, Lessor and Lessee shall determine or cause to be determined, the Fair Market Value and Fair Market Rental of the Units then subject to this Lease (in each case, pursuant to Section 16.6 below).

16.3 End of Term Purchase Options.

If this Lease has not been earlier terminated and Lessee shall have delivered the EOL Option Notice pursuant to Section 16.2, Lessee may irrevocably elect by written notice delivered to Lessor not less than ninety (90) days prior to the Base Lease Expiration Date or the expiration date of any Renewal Term for such Units, as the case may be, to purchase on the applicable Base Lease Expiration Date for any Unit or the expiration date of any Renewal Term (a "*Purchase Date*") (a) any or all of the Units then subject to this Lease (such number to be specified by Lessee and such Units to be randomly selected); provided, that such election will not result in less than fifteen (15) Units remaining subject to this Lease or being returned to Lessor pursuant to Section 17, or (b) if a Specified Default or Lease Event of Default shall have occurred and be continuing, all of the Units then subject to this Lease, in each case at a purchase price equal to the Fair Market Value thereof (as determined in Section 16.6 below) payable as set forth in Section 16.4 hereof.

16.4 Payments.

If the Lessee shall have exercised its option to purchase any Unit pursuant to Section 16.1 or 16.3 on the Special Purchase Date or Purchase Date, as applicable (x) the Lessor shall, subject to the payment of all amounts referred to in clauses (y) and (z) below, assign,

transfer and convey to the Lessee all right, title and interest of the Lessor in and to each Unit being purchased on such date on an "as-is," "where-is" and "with all faults" basis, without recourse or warranty except as to Lessor's Liens, (y) the Lessee shall pay, by 9:00 a.m. (San Francisco time) on such date by wire transfer in immediately available funds, to the Lessor, the Fair Market Value or the Special Purchase Price, as the case may be, with respect to the Units purchased on such date, and (z) the Lessee shall pay all Rent, including any arrears Base Rent and Supplemental Rent in respect of any Make Whole Amount due and payable on such purchase date and all other amounts due and payable hereunder or under the Operative Documents, other than any Base Rent payable in advance on such purchase date.

16.5 Renewal Options.

If this Lease has not been earlier terminated and no Specified Default or Lease Event of Default shall be continuing on the effective date of the renewal and Lessee shall have delivered the EOL Option Notice pursuant to Section 16.2, Lessee may elect, by written notice delivered to Lessor not less than ninety (90) days prior to the Base Lease Term Expiration Date or the expiration date of the applicable Renewal Term for such Units, as the case may be, to renew this Lease as of such applicable date with respect to any or all of the Units then subject to this Lease and in any event such number of Units which will result in at least fifteen (15) Units being subject to this Lease (unless such renewal option is elected for all such Units) and taking into account all other elections made under this Section 16.5 with respect to the Fixed Rate Renewal Term or Fair Market Renewal Term as the case may be (such number to be specified by Lessee and such Units to be randomly selected) to extend this Lease as follows:

(i) at the end of the Base Lease Term, for up to two successive Renewal Terms of not less than one (1) year each nor more than three (3) years in the aggregate (each a "*Fixed Rate Renewal Term*") at the Fixed Rate Renewal Rent; or

(ii) at the end of the Base Lease Term or any Renewal Term for any number of Renewal Terms of one (1) or more years as selected by Lessee, at Fair Market Rental (each a "*Fair Market Renewal Term*").

If the Lease is to be extended with respect to less than all Units, Lessee shall specify in such notice the particular Units as to which the Lease is to be extended pursuant to the foregoing provisions of this Section 16.5. The failure by Lessee to provide any renewal notice within the time period required by this Section 16.5 shall be deemed to be an election by Lessee not to renew this Lease.

16.6 Determination of Fair Market Value and Fair Market Rental.

(i) Upon Lessor's receipt of the EOL Option Notice, Lessor and Lessee shall negotiate in good faith to determine the Fair Market Value and Fair Market Rental of the Units within twenty (20) days after such receipt. If after such twenty (20) day period, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental,

as the case may be, of the Units, the Fair Market Value or Fair Market Rental, as the case may be, shall be determined in accordance with the appraisal procedure set forth in this Section 16.6 (except in connection with any appraisal conducted pursuant to Section 13, in which case Lessor shall choose such appraiser). If (1) either party shall have given written notice to the other requesting determination of such Fair Market Value or Fair Market Rental by such appraisal procedure or (2) the parties are unable to agree on such values within the time period set forth in the preceding sentence, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is appointed within ten (10) days after such notice requesting such determination is given or the expiration of the twenty (20) day period, as the case may be, such determinations shall be made by a panel of three independent appraisers, one of whom shall be selected by Lessee and another of whom shall be selected by Lessor, both selections to be made within ten (10) days after the end of such ten (10) day period, and the third of whom shall be selected by the two appraisers so selected. If Lessor or Lessee fails to appoint an appraiser within such ten (10) day period, no other appraiser shall be appointed and the appraisal shall be made solely by the appraiser appointed by the other party. If the two appraisers so selected cannot agree upon such third appraiser, such third appraiser shall be selected by the American Arbitration Association (or any successor organization) from a pool of arbitrators having experience in the railroad industry and a familiarity with equipment comparable to the Units.

(ii) If a single appraiser shall have been appointed by the parties, the determination of such appraiser shall be final and binding upon the parties. If three appraisers shall have been appointed, the average of the appraisals of the two of the three appraisers whose appraisals are the closest shall constitute the determination of the appraisers (unless one appraisal is equally close to two different appraisals, in which case the average of the three appraisals shall constitute such determination) and be final and binding upon the parties.

(iii) The appraiser or appraisers shall be provided with, and instructed to appraise in accordance with, the definitions of all terms appearing in the Operative Documents and having a bearing on the determinations subject to appraisal.

(iv) The fees and expenses of each appraiser (a) selected by Lessee shall be paid by Lessee, (b) selected by Lessor shall be paid by Lessor and (c) selected jointly by Lessee and Lessor or selected by the appraisers selected by Lessee and Lessor or selected by the American Arbitration Association (or any successor organization) shall be paid one-half by Lessee and one-half by Lessor; provided, that the expenses of all appraisals (1) carried out pursuant to Section 13 or (2) if no purchase option or renewal option is exercised under this Section 16, shall be paid in their entirety by Lessee.

SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM

17.1 Redelivery Locations for All Units.

At the expiration of the Lease at the end of the Base Term or any applicable Renewal Term, Lessee shall assemble and deliver the Units at Lessee's cost and expense to not

more than five (5) locations (each a "Redelivery Location"). The Redelivery Locations shall be located in Chicago, Los Angeles, Atlanta, Dallas, Memphis, the New York/New Jersey area or such other locations as are mutually agreed by Lessor and Lessee, which Redelivery Locations shall be agreed upon or specified in writing from the foregoing list of locations by Lessee, as applicable, prior to the expiration of the Lease Term. Lessee shall use its best efforts to redeliver each Unit in accordance with the terms of this Section 17 and, commencing on the Base Lease Expiration Date, Lessee will exercise all commercially reasonable efforts to return such Units as soon as practicable and Lessee shall not take any affirmative actions to prolong the time required for the return of the Units.

17.2 Redelivery of Tier I Units.

(i) Notice of Redelivery of Tier I Units. With respect to each Redelivery Location, Lessee shall deliver one, and only one, notice (each such notice, a "Tier I Redelivery Notice") on or prior to the expiration of the thirty (30) day period following the expiration date of the Lease Term (the "30-Day Period"), specifying for each such Redelivery Location, the number of Units (which shall not be less than fifteen (15) Units), if any, in fact located at such Redelivery Location as of the date of such notice. Once notice is given, no further Tier I Units shall be delivered to that Redelivery Location. All Units for which a Tier I Redelivery Notice is provided in accordance with this Section 17.2 are referred to herein as "Tier I Units." All Units for which Lessee does not provide a Tier I Redelivery Notice on or prior to the expiration of the 30-Day Period shall be referred to herein as "Tier II Units."

(ii) Acceptance of Redelivery of Tier I Units. Lessor shall accept redelivery of each Tier I Unit upon the earlier of (a) Lessor's removal of such Tier I Unit from its Redelivery Location or (b) the expiration of the storage period for such Tier I Unit pursuant to Section 17.2(iii). All of Lessee's covenants under the Lease (including those relating to maintenance, insurance and Liens) shall continue on a daily basis; provided, that Lessee shall have no obligation with respect to Base Rent during the 30-Day Period. Notwithstanding the foregoing, the Lease shall not terminate with respect to any Tier I Unit until such Tier I Unit is in compliance with Section 17.4 or is deemed to be in compliance with Section 17.4 pursuant to Section 17.2(iv). Upon acceptance of redelivery, Lessor shall bear all risk and expense with respect to such Tier I Unit, including risk of loss, costs of moving, insuring and further storage of such Unit; provided, however, Lessee shall in all events be responsible for causing such Unit to be in the condition required under Section 17.4, subject to Section 17.2(iv).

(iii) Storage of Tier I Units. Lessee shall provide storage for each Tier I Unit, on storage tracks selected and owned or leased by Lessee and located at the Redelivery Location for such Tier I Unit, free of charge and at Lessee's risk and expense for a period of not more than sixty (60) days, commencing on the date Lessor receives the Tier I Redelivery Notice for such Tier I Unit.

(iv) Inspections of Tier I Units During Storage Period. During the sixty (60) day storage period for each Tier I Unit (a) Lessee shall permit Lessor or any Person designated by Lessor, including prospective purchasers of any Unit, to inspect such Tier I Unit in accordance

with the terms of Section 9 hereof; provided, that Lessee shall not be liable for any injury or death to any person except to the extent resulting directly from any gross negligence or willful misconduct of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted under this Section 17.2(iv) and (b) Lessor, or its agent, may inspect any Tier I Unit to determine whether such Tier I Unit is in the condition required by Section 17.4. At any inspection pursuant to Section 17.2(iv)(b), an independent inspector selected by Lessor and reasonably satisfactory to Lessee, shall be present at the inspection and shall within a reasonable time from the date of such inspection determine and specify in writing the agreed repairs or work, if any, necessary to place each Tier I Unit in the condition required by Section 17.4. Lessor shall pay the costs and expenses of the independent inspector for one (1) initial inspection of Tier I Units at each Redelivery Location. If Lessor has not inspected such Tier I Unit (or caused such Tier I Unit to be inspected) and objected in writing to the condition of such Tier I Unit within thirty (30) days after its receipt of the Tier I Redelivery Notice for such Tier I Unit pursuant to Section 17.2, or if Lessor removes or causes to be removed such Tier I Unit from any Redelivery Location, such Tier I Unit shall be deemed to have satisfied the conditions of Section 17.4. If any Tier I Unit is inspected pursuant to this Section 17.2(iv)(b) and determined by the independent inspector not to be in the condition required by Section 17.4, Lessee, at its expense and risk, shall within ten (10) days thereafter make such repairs and perform such work as shall be necessary to place such Tier I Unit in the condition required by Section 17.4. Lessee will provide Lessor with prompt written notice when such Unit has been repaired so as to be in the condition required by Section 17.4. If such Tier I Unit is not repaired within such period pursuant to this Section 17.2(iv), Lessor may elect by a written and irrevocable notice to Lessee to deem such Tier I Unit to have suffered a Casualty Occurrence, in which event Lessee shall pay to Lessor within thirty (30) days after such notice (1) the greater of (a) the Fair Market Value (determined on the assumption that such Tier I Unit was in the condition required by Section 17.4) and (b) the Casualty Value, in each case, for such Tier I Unit determined as of the last day of the applicable Lease Term and (2) all other Rent then due with respect to such Tier I Unit and, upon Lessee's compliance with the foregoing, Lessor shall comply with Section 7.2(iii) with respect to such Tier I Unit. If any Tier I Unit upon any inspection pursuant to this Section 17.2(iv) is not in compliance with the conditions set forth in Section 17.4, then Lessee will pay the reasonable cost and expense of any reinspections of such Tier I Unit conducted by such independent inspector which are required because of such noncompliance.

17.3 **Redelivery of Tier II Units.** Tier II Units shall be returned in accordance with the terms and conditions of Annex B to this Lease.

17.4 **Return Condition.**

(i) At the time of any return, each Unit shall be free and clear of all liens, security interests, charges and encumbrances and rights of others (other than Permitted Liens), it being understood that Lessee will promptly and diligently cause any such Permitted Liens (other than Lessor's Liens) to be discharged or bonded or otherwise secured for payment and discharge (provided that at the time of a return pursuant to Section 14.1, any such Permitted Liens (other

than Lessor's Liens) shall have been discharged, bonded or otherwise secured for payment and discharge) and shall be in the condition required by Section 12.1 and this Section 17.2. Each Unit returned to Lessor pursuant to this Section 17 shall (a) be in compliance with Sections 11 and 12.1 of this Lease, (b) be suitable for commercial usage without material additional repair or refurbishment and immediately suitable for interchange by a new owner or user under the Interchange Rules and (c) will have all names, insignia and similar marks of Lessee and any permitted sublessee painted over in blocks pursuant to Lessee's standard maintenance procedures. Lessee shall provide to Lessor, with respect to each Unit returned to Lessor pursuant to this Section 17, true, correct and complete copies of all records, logs and other materials maintained by Lessee in accordance with Section 12.1(ii).

(ii) Upon the request of Lessor, and at Lessor's sole expense, Lessee shall cooperate with Lessor in obtaining the valid and effective issuance, or, as the case may be, transfer or amendment of all governmental action necessary or, in the reasonable opinion of Lessor, desirable for the ownership or operation of any Unit by Lessor or any transferee, lessee or assignee thereof. Any change in reporting marks on the Units shall be the responsibility of Lessor.

17.5 Continuing Obligations

If any Unit then subject to this Lease is not returned within thirty (30) days after the date of expiration of the Lease Term in accordance with Section 14 or this Section 17, as the case may be, each Unit not so returned shall continue to be subject to all of the relevant covenants of Lessee set forth in this Lease, and Lessee shall pay rent on each such Unit equal to the daily equivalent of the Base Rent for such Unit, as the case may be, from the expiration of such thirty (30) day period until such Unit is so delivered, subject to the provisions of Annex B to the Lease. Nothing contained herein shall be construed to abrogate Lessee's obligation to return the Units as set forth in this Section 17 (including Annex B to the Lease).

SECTION 18. RECORDING

18.1 **ICC; State**. Lessee, at its own expense, will cause this Lease, each Lease Supplement relating to the Units being delivered on applicable Closing Date, the Indenture and the Indenture Supplements relating to the Units being delivered on each applicable Closing Date to be filed with the ICC pursuant to Section 11303 of the Act prior to the delivery and acceptance of any Unit and shall cause to be so filed promptly after execution and delivery thereof by all parties thereto any Lease Supplement and Indenture Supplement entered into in accordance with the Operative Documents. Immediately following each Closing Date, Lessee will cause this Lease, each Lease Supplement relating to the Units being delivered on the applicable Closing Date, the Indenture and each Indenture Supplement relating to Units being delivered on the applicable Closing Date to be deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada and, within 21 days following the Closing Date or the replacement of any Unit, as applicable, cause notice of such deposit to be forthwith given in *The Canada Gazette* in accordance with said Section 90 and will furnish Lessor, the Indenture Trustee and the Owner Participant proof thereof. Lessee, at its own expense, will further cause this Lease, any Lease Supplements, the Indenture, any Indenture Supplements and/or appropriate

financing statements or continuation statements to be filed and recorded and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of California (and, if Lessee changes its chief executive office to any other state, in such state) and in any other state of the United States or the District of Columbia or Canada where filing is necessary to the reasonable satisfaction of counsel to Owner Participant and counsel to Indenture Trustee and shall do such other things to preserve and maintain the perfection and priority of the Lien of the Indenture and the ownership of the Lessor in the Equipment as such counsel may reasonably request.

18.2 Continuing Obligations. Lessee, in addition to the requirements of Section 18.1 above, will from time to time do and perform in a timely manner any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, rerecord or redeposit whenever required) any and all further instruments required by law (including without limitation continuation statements) or reasonably requested by Lessor, Owner Participant or Indenture Trustee for the purpose of proper protection, to its satisfaction, of its respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Indenture.

SECTION 19. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If Lessee fails to perform or comply with any of its agreements contained herein, Lessor and (but without duplication) Indenture Trustee may upon notice to Lessee (but shall be under no obligation to) perform or comply with such agreement, and the amount of the reasonable costs and expenses of Lessor or Indenture Trustee, as the case may be, incurred in connection with such performance or compliance, together with interest on such amount at the Overdue Rate shall be payable by Lessee upon demand. No such performance or compliance by Lessor or Indenture Trustee, as the case may be, shall be deemed a waiver of the rights and remedies of Lessor, Indenture Trustee or any assignee of Lessor against Lessee hereunder.

SECTION 20. NOTICES

Any notices, request or other communication hereunder shall be in writing and, if mailed, shall be deemed to be duly given or made in accordance with the Participation Agreement.

SECTION 21. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 22. EFFECT AND MODIFICATION OF THIS LEASE

Except for the other Operative Documents, this Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. Subject to Article XIII of the Indenture, no variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee, and if required by the Indenture, Indenture Trustee.

SECTION 23. NATURE OF THIS LEASE

It is the intention of the parties hereto that this Lease shall constitute an agreement of lease, and prior to the exercise (if any) by Lessee of its rights to purchase the Units, nothing herein shall be construed as conveying to Lessee any title to or ownership of the Units, the rights and interest of Lessee hereunder with respect to and in the Units being those of a lessee only.

SECTION 24. EXECUTION

This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. To the extent, if any, that this Lease or any Lease Supplement constitutes chattel paper within the meaning of the Uniform Commercial Code (or other law respecting security interests) as in effect in any applicable jurisdiction, no security interest in Lessor's interest under this Lease or any such Lease Supplement may be created through the transfer or possession of any counterpart of this Lease or such Lease Supplement other than the original executed counterpart No. 1 hereof or thereof, which shall be identified as the counterpart containing the receipt therefor executed by Indenture Trustee on the signature page hereof or thereof.

SECTION 25. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the law of the State of New York, without regard to principles of conflict laws; provided, that the parties shall be entitled to all rights conferred by Section 11303 of the Act.

SECTION 26. VOLUNTARY TERMINATION BY LESSEE

26.1 **Termination.** So long as no Specified Default or Lease Event of Default has occurred and is continuing, at any time on or after the seventh (7th) anniversary of the applicable Closing Date with respect to any Units, if Lessee shall have determined that such Units shall have become obsolete or operationally uneconomic or surplus to Lessee's needs and shall have furnished to Lessor a certificate executed by an authorized officer of Lessee having a title of Vice President or higher to such effect, Lessee shall have the right at its option, on at least one hundred twenty (120) days' prior written notice to Lessor, Owner Participant and Indenture

Trustee to terminate this Lease on the Rent Payment Date following such determination and specified in such notice (a "*Termination Date*") with respect to any one or more Units then remaining under the Lease or, if less than all of the Units then subject to this Lease are to be terminated pursuant to this Section 26.1, such number which will result in at least fifteen (15) Units remaining subject to this Lease (in each case randomly selected). Lessor may, by irrevocable notice to Lessee given on or before the thirtieth (30th) day after the date of Lessee's termination notice, elect not to sell such Units as of the Termination Date, whereupon (i) Lessor shall prepay all amounts due with respect to the Secured Notes other than the Make Whole Amount, and (ii) Lessee shall (a) deliver such Units to Lessor in the same manner and condition as if delivery were made to Lessor pursuant to Section 17.1 and Section 17.4 treating the Termination Date as the termination date of the Lease Term with respect to such Units, (b) pay to Lessor all Base Rent owing with respect to such Units on such Termination Date, other than any Base Rent payable in advance on such date, and (c) pay to the Persons entitled thereto, all Supplemental Rent due and owing on the Termination Date and unpaid with respect to such Units, including an amount equal to any Make Whole Amount in respect of the principal amount of the Secured Notes to be prepaid, to the Indenture Trustee. Upon payment of such amounts, Lessee shall be released from its obligations to pay Casualty Value and all Base Rent payable in advance on the Termination Date or in arrears on all Rent Payment Dates occurring after such Termination Date with respect to such returned Units and this Lease shall terminate with respect to such terminated Units (except for Supplemental Rent obligations with respect to such Units surviving pursuant to the Participation Agreement or the Tax Indemnity Agreement or which have otherwise accrued but not been paid as of such date).

26.2 **Solicitation of Bids.** Unless Lessor shall have elected to retain such Unit in accordance with the last sentence of Section 26.1, Lessee, as agent for Lessor, shall use commercially reasonable efforts to obtain bids for the cash purchase on the Termination Date of such Unit during the period from the giving of such notice until the Termination Date. Lessee, however, shall have no liability for any failure to obtain the best bid for the Equipment. Lessee shall certify to Lessor in writing the terms and amount of each bid received by Lessee and the name and address of the Person (who shall not be Lessee or any Person acting for or affiliated with Lessee) submitting such bid. Lessor may, at Lessor's expense, independently obtain bids for such purchase and certify them to Lessee as provided in the next preceding sentence.

26.3 **Third-Party Sale.** On the Termination Date, unless Lessor shall have elected to retain such Unit pursuant to the second sentence of Section 26.1, Lessor shall sell such Unit for cash to a third party who shall have submitted the highest bid prior to such date; provided, however, that Lessee shall have the right to withdraw its election to terminate at anytime prior to the 30th day prior to the Termination Date and reject each bid, if any, theretofore received; provided, further, however, that Lessee may withdraw such election no more than two (2) times and, upon any such revocation, Lessee shall reimburse each of Lessor, Owner Participant and Indenture Trustee for all reasonable out-of-pocket expenses incurred by it in connection with the revoked termination and this Lease shall continue in full force and effect with respect to such Unit. The total sale price realized at such sale, net of all fees and expenses of the sale incurred by Lessor, Lessee, Owner Participant and Indenture Trustee in connection with the

sale (including commissions) shall be received by Lessor and, in addition, on the date of such sale Lessee shall pay to Lessor the sum of: (i) the amount, if any, by which the Casualty Value for such Unit computed as of the Termination Date exceeds such total sales price net of such fees and expenses, (ii) the installment of Base Rent payable in arrears which is due on the Termination Date and (iii) all other amounts, whether Rent or otherwise, owing by Lessee to Lessor, Owner Participant, Indenture Trustee and any holder of a Secured Note under any Operative Document, under the Participation Agreement and the Tax Indemnity Agreement, including an amount equal to any Make-Whole Amount payable to Loan Participant. Lessor shall transfer to the purchaser named in the highest cash bid certified by Lessee upon receipt of the purchase price therefor and payment of all other sums payable to Lessor under this Section 26, all Lessor's right, title and interest in and to such Unit, without recourse, representation or warranty, except as to the absence of Lessor's Liens, and this Lease with respect to such Unit shall terminate (except for Supplemental Rent obligations with respect to such Units surviving pursuant to the Participation Agreement or the Tax Indemnity Agreement or which have otherwise accrued but not been paid as of the date of such termination). If no sale shall have occurred on the Termination Date or if Lessor elects to retain the Units and fails to prepay the Secured Notes, this Lease shall continue in full force and effect as to such Unit as if no notice of termination had been given; provided, that if such sale shall not have occurred solely because of Lessee's failure to pay the amounts required to be paid, Lessee shall have no further right to terminate this Lease with respect to such Units, and such failure to pay such amounts shall be deemed a withdrawal of the termination notice referred to in Section 26.1.

26.4 **Notice to Indenture Trustee.** At least thirty (30) days (or such shorter period as is acceptable to Indenture Trustee) prior to the Termination Date, Lessee shall furnish, or cause to be furnished, to Indenture Trustee and Owner Participant, in writing, all pertinent information required to be included in the notice to be given by Indenture Trustee pursuant to Section 6.05 of the Indenture and described in subsections (i), (ii) and (iii) thereof.

SECTION 27. ASSIGNMENT

Lessee may not assign its rights and obligations under this Lease and the other Operative Documents without the prior written consent of Lessor (such consent not to be unreasonably withheld), except that no such consent shall be required in the case of an assignment to a wholly-owned subsidiary of Lessee, provided that Lessee guarantees such subsidiary's obligations under the Lease in a form of guaranty reasonably satisfactory to Lessor. Notwithstanding the foregoing, Lessee may, without the consent of Lessor, assign its interest hereunder to any corporation into or with which it shall be merged or consolidated or to whom it shall transfer substantially all of its property; provided, that after giving effect to such merger, consolidation or transfer, no Lease Default or Lease Event of Default shall have occurred and be continuing. In connection with any such assignment, the surviving entity, by merger, consolidation or otherwise, shall execute and deliver to Lessor and Indenture Trustee instruments evidencing the express assumption of Lessee's obligations hereunder and Lessor and Indenture Trustee shall have received an opinion of counsel reasonably satisfactory to them, in form and substance reasonably satisfactory to them, to the effect that the instrument of merger,

consolidation or other assumption has been duly authorized, executed and delivered and constitutes the legal, valid and binding contract and agreement of the surviving entity enforceable in accordance with its terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

SECTION 28. LESSOR

Whenever the term "Lessor" is used in this Lease it shall apply and refer to Lessor and (to the extent assigned by Lessor) any permitted assignee of Lessor (including, so long as any indebtedness evidenced by the Secured Notes or interest thereon shall remain unpaid or any other obligation thereunder be continuing, Indenture Trustee, all as more fully provided in Section 15.1(ii)).

SECTION 29. LIABILITY OF LESSOR LIMITED

It is expressly agreed, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of Lessor are made and intended not as personal representations, warranties, covenants, undertakings and agreements by Trust Company or for the purpose or with the intention of binding Trust Company personally, but are made and intended for the purpose of binding only the Trust Estate, and this Lease is executed and delivered by Trust Company not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility, except in the case of willful misconduct or gross negligence of Lessor (other than with respect to the handling of funds, in which case Lessor shall be accountable for its failure to exercise ordinary care), is assumed by or shall at any time be asserted or enforceable against Trust Company on account of this Lease or on account of any representation, warranty, covenant, undertaking or agreement of Lessor, either expressed or implied herein, all such personal liability, if any, being expressly waived and released by Lessee and by all Persons claiming by, through or under it, and that all recourse against Trust Company or Owner Participant under this Lease shall be limited to the Trust Estate.

SECTION 30. NO MERGER

There shall be no merger of this Lease or of the leasehold interest hereby created with the title to the Units, or any portion thereof or interest therein by reason of the fact that the same Person may acquire or hold directly or indirectly this Lease or the leasehold interest created hereby or any interest in this Lease or in any such leasehold interest as well as the title to the Units.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed in their respective corporate names as of the day and year first above written.

MERIDIAN TRUST COMPANY,
not in its individual capacity, but solely as Owner
Trustee, Lessor

By: 
Name: Judy Davis
Title: Vice President

APL LAND TRANSPORT SERVICES, INC., Lessee

By: _____
Name: _____
Title: _____

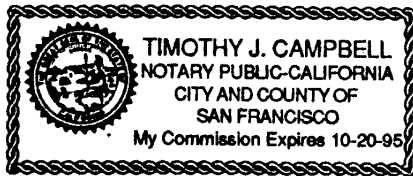
STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On this 16 day of November, 1994, before me personally appeared Judy Davis, to me personally known, who being by me duly sworn, says that he is the Vice President of MERIDIAN TRUST COMPANY, a Pennsylvania trust company, as Owner Trustee under such instrument, that said instrument was signed on this date on behalf of said national banking association by authority of its Board of Directors, and he/she acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Timothy J. Campbell
Notary Public

My Commission Expires: 10/20/95

[SEAL]

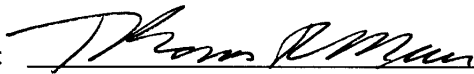


IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed in their respective corporate names as of the day and year first above written.

MERIDIAN TRUST COMPANY,
not in its individual capacity, but solely as Owner
Trustee, Lessor

By: _____
Name:
Title:

APL LAND TRANSPORT SERVICES, INC., Lessee

By:  _____
Name: Thomas R. Meier
Title: Assistant Treasurer

STATE OF California)
) ss
COUNTY OF Alameda)

On this 15th day of November, 1994, before me personally appeared
Thomas R. Meier, to me personally known, who being by me duly sworn, says that he is the
Assistant Treasurer of APL LAND TRANSPORT SERVICES, INC., that said instrument was signed on
this date on behalf of said corporation by authority of its Board of Directors, and he
acknowledges that the execution of the foregoing instrument was the free act and deed of said
corporation.

Aileen Iverson
Notary Public

My Commission Expires July 29, 1998

[SEAL]

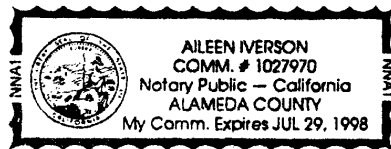


EXHIBIT A TO LEASE OF
RAILROAD EQUIPMENT

LEASE SUPPLEMENT NO. ____

THIS LEASE SUPPLEMENT NO. ____ dated _____, 19__ (this "*Lease Supplement*"), between _____, a _____, not in its individual capacity but solely as trustee under that certain Trust Agreement, dated as of November 15, 1994, between KBNY LEASING INC., a New York corporation, and such trustee, as lessor, and APL LAND TRANSPORT SERVICES, INC., a Tennessee corporation, as lessee, pursuant to and in accordance with the Lease of Railroad Equipment dated as of November 15, 1994, between Lessor and Lessee (as amended and supplemented to the date hereof, the "*Lease*").

1. Capitalized terms and phrases used and not otherwise defined herein shall for all purposes of this Lease Supplement have the respective meanings specified therefor in Annex A to the Lease, as originally executed or as modified, amended or supplemented in accordance with the applicable provisions thereof.

2. The Units covered by this Lease Supplement are described in Schedule 1 attached hereto.

3. The Equipment Cost for each Unit is set forth on the Equipment Schedule attached hereto.

4. The Interim Term of the Lease for the Units covered by this Lease Supplement shall commence on the date of this Lease Supplement and shall terminate on May 14, 1995 unless terminated pursuant to the terms of the Lease. The Base Lease Term for the Units covered by this Lease Supplement shall commence on May 15, 1995 and shall terminate on May 15, 2015, unless earlier terminated or extended pursuant to the terms of the Lease.

5. By the execution and delivery of this Lease Supplement, Lessee and Lessor reaffirm all of the terms, provisions and conditions of the Lease.

6. This Supplement may be executed in several counterparts (or upon separate signature pages bound together into one or more counterparts), such counterparts together constituting but one and the same instrument. To the extent, if any, that this Lease Supplement constitutes chattel paper or other collateral within the meaning of the Uniform Commercial Code (or other law respecting security interests) as in effect in any applicable jurisdiction, no security interest in Lessor's interest under this Lease Supplement may be created through the transfer or possession of any counterpart of this Lease Supplement other than the original executed counterpart No. 1 hereof which shall be identified as the counterpart containing

the receipt therefor executed by Indenture Trustee on or immediately following the signature page hereof.

7. Lessee hereby represents and warrants to Lessor that, effective on the date hereof, the Units described in Schedule 1 hereto have been delivered to Lessee, have been duly accepted by Lessee and that said Schedule 1 contains a correct and complete description of said Units sufficient for the purposes of the Lease.

IN WITNESS WHEREOF, the parties have caused this Lease Supplement to be
duly executed by their respective duly authorized officers as of the date first set forth above.

_____, not in its individual
capacity, but solely as Owner Trustee, Lessor

By: _____
Name:
Title:

APL LAND TRANSPORT SERVICES, INC.,
Lessee

By: _____
Name:
Title:

TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT CONSTITUTES CHATTEL PAPER WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE (OR OTHER LAW RESPECTING SECURITY INTERESTS) AS IN EFFECT IN ANY APPLICABLE JURISDICTION, NO SECURITY INTEREST IN LESSOR'S INTEREST UNDER THIS LEASE SUPPLEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL EXECUTED COUNTERPART NO. 1 HEREOF WHICH SHALL BE IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, IMMEDIATELY FOLLOWING THIS LEGEND. SUCH COUNTERPART IS THE ONLY COUNTERPART OF THE LEASE SUPPLEMENT THAT CONTAINS THIS LEGEND.

Receipt of this original counterpart No. 1 of the foregoing Lease Supplement is hereby acknowledged this ____ day of _____, 19 ____.

as Indenture Trustee

By _____
Name:
Title:

STATE OF _____)
) ss
COUNTY OF _____)

On this ____ day of November, 1994 before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the Treasurer of APL LAND TRANSPORT SERVICES, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires: _____

[SEAL]

_____)
_____) ss
_____)

On this ____ day of November, 1994 before me personally appeared _____, to me personally known, who being by me duly sworn, says that he/she is the _____ of _____, a _____, as Owner Trustee under such instrument, that said instrument was signed on behalf of said banking corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said banking corporation.

Notary Public

My Commission Expires:_____

[SEAL]

SCHEDULE 1 TO LEASE
SUPPLEMENT NO. _____

DESCRIPTION OF UNITS

<u>EQUIPMENT TYPE</u>	APL <u>EQUIPMENT</u> <u>NUMBERS</u>
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SCHEDULE 1 TO LEASE
SUPPLEMENT NO. 1

DESCRIPTION OF UNITS

<u>EQUIPMENT TYPE</u>	<u>MANUFACTURER'S NUMBERS</u>	<u>AMTRAK EQUIPMENT NUMBERS</u>
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ANNEX A

DEFINITIONS

The following terms shall have the following meanings for all purposes of the agreement to which this Annex A is appended:

"*AAR*" means Association of American Railroads.

"*Act*" means the Interstate Commerce Act (49 U.S.C. §10101 et seq.).

"*Additional Insureds*" means Trust Company, Owner Trustee, Owner Participant, Indenture Trustee, Loan Participant and each holder, from time to time, of the Secured Notes.

"*Affiliate*", with respect to any Person, shall mean any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"*After-Tax Basis*" means with respect to any payment to be received by a Person, the amount of such payment plus a further payment or payments so that the net amount received by such Person, after deducting from such payments the amount of all Taxes imposed on the Person receiving such payment with respect to the receipt or accrual thereof (net of any current credits, deductions or other Tax benefits or the present value of any reasonably ascertainable future credits, deductions, or other Tax benefits arising from the payment by such Person of any amount, including income taxes, with respect to the payment received) is equal to the original payment required to be received.

"*Aggregate Casualty Payment*" has the meaning specified in Section 7.3 of the Lease.

"*ALTSP*" means APL Land Transport Services, Inc., a Tennessee corporation.

"*Amendment*" means any amendment, modification, waiver or consent in respect of any provisions of the Lease.

"*Applicable Law*" has the meaning specified in Section 9.01 of the Trust Agreement.

"*Appraiser*" means Independent Equipment Company.

"*Assumed Principal Amount*" has the meaning specified in Section 2.03(i) of the Indenture.

"*Authorized Officer*" means the President, any Vice President, any Assistant Vice President, any Treasurer, any Assistant Treasurer, and, with respect to Owner Trustee, any Senior Financial Services Officer, any Financial Services Officer, or any other Officer in the Corporate Trust Administration of Owner Trustee, or any other officer of the entity who has been authorized by the Board of Directors or the Executive Committee of the Board of Directors of such entity to perform the specific act or duty or to sign the specific document in question.

"*Bankruptcy Code*" means the Federal Bankruptcy Code (11 U.S.C. § 101 *et seq.*), as amended from time to time.

"*Base Lease Commencement Date*" for a Unit means May 15, 1995.

"*Base Lease Expiration Date*" with respect to any Unit means May 15, 2015.

"*Base Lease Term*" with respect to any Unit means the period described in the second sentence of Section 3 of the Lease.

"*Base Rent*" with respect to any Unit (i) as of any Rent Payment Date for such Unit during the Base Lease Term means the Equipment Cost of such Unit multiplied by the Rent Factor applicable to such Unit for such Rent Payment Date and (ii) as of any Rent Payment Date for such Unit during a Renewal Term, the applicable Renewal Rent then due.

"*Bills of Sale*" means, collectively, each warranty bill of sale, dated the applicable Closing Date, made by a Manufacturer in favor of Owner Trustee with respect to the Units to be sold by such Manufacturer to the Owner Trustee on such date.

"*Business Day*" means any day other than (i) a Saturday or Sunday and (ii) a day on which state, provincial or national banking institutions are authorized or obligated by law or executive order to remain closed in the States of New York, Utah, Pennsylvania or California.

"*Casualty Occurrence*" with respect to any Unit means any of the following events with respect to such Unit: (i) such Unit suffers an actual or constructive total loss or shall be or become in the good faith opinion of Lessee (as evidenced by an Officer's Certificate) worn out or shall be destroyed or irreparably damaged, or uneconomical to repair, or rendered permanently unfit for commercial use from any cause whatsoever during the Lease Term or until such Unit is returned pursuant to Section 14 or Section 17 of the Lease, (ii) title to such Unit shall be taken by any Governmental Authority by condemnation or otherwise, (iii) use of such Unit shall be taken or requisitioned by any Governmental Authority, for a period which shall exceed twelve (12) months (or beyond the end of the remaining Lease Term, if it first occurs), (iv) such Unit

shall be or become lost or stolen for a period in excess of one hundred twenty (120) days after Lessee becomes aware of such event (or to the end of the remaining term of the Lease, if it first occurs), or (v) Lessor makes an election with respect to any event specified in the penultimate sentence of Section 17.2(b)(iv) of the Lease or in Section 3(a) through (f) of Annex B of the Lease with respect to such Unit.

"Casualty Value" has the meaning specified in Section 7.5 of the Lease.

"Casualty Value Determination Date" means with respect to any Casualty Occurrence the first date listed on Schedule IV to the Participation Agreement (each of which shall be a Rent Payment Date) that occurs after a Casualty Occurrence has occurred, unless such date is less than 90 days after such occurrence, in which case, such date may, at Lessee's election, be the next succeeding date listed on such Schedule IV.

"Casualty Value Factor" with respect to any Unit as of any Casualty Value Determination Date during the Interim Term or the Base Lease Term means the percentage of Equipment Cost applicable to such Unit set forth opposite such Casualty Value Determination Date on Schedule IV to the Participation Agreement, in each case as such Casualty Value Factors may have been adjusted pursuant to Section 4.3 of the Lease, Section 16 of the Participation Agreement or Section 9 of the Tax Indemnity Agreement.

"Change in Tax Law" means with respect to any Unit any change in the Code which affects the Net Economic Return.

"Claims" has the meaning specified in Section 6.2(i) of the Participation Agreement.

"Closing Date" with respect to any Unit means the date on or as of which such Unit is purchased by the Owner Trustee and leased to Lessee under and subject to the Lease.

"Closing Notice" has the meaning specified in Section 3.1 of the Participation Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commitment" of a Participant means (i) in the case of Owner Participant, the amount to be provided to Owner Trustee pursuant to Section 2.5(i) of the Participation Agreement and (ii) in the case of Loan Participant, the amount of the secured loan to be made by Loan Participant pursuant to Section 2.3(i) of the Participation Agreement.

"Consent and Agreement" means the Consent and Agreement of each Manufacturer dated as of November 15, 1994 whereby each Manufacturer, respectively, consents and agrees to the terms and conditions of the Purchase Agreement and Warranty Assignment to which it is a party.

"*Debt Rate*" means 9.39 percent per annum.

"*Defaulting Participant*" has the meaning specified in Section 3.2(iii) of the Participation Agreement.

"*Delayed Closing Date*" has the meaning specified in Section 3.4 of the Participation Agreement.

"*Equipment*" means up to one hundred fifty (150) five-platform, one hundred twenty-five ton, double-stack container railcars (AAR type-367) to the extent and for so long as they are accepted under and subject to the Lease, together with related appliances, parts, accessories, appurtenances, additions, improvements and other equipment or components of any nature installed thereon, as specified in the Closing Notice (but subject to Section 3.5 of the Participation Agreement) and replacements thereof and substitutions therefor, including any Replacement Units substituted for Units in accordance with Section 7.2 of the Lease (individually, a "*Unit*" and, collectively, the "*Equipment*" or the "*Units*").

"*Equipment Cost*" for any Unit has the meaning set forth in Schedule III to the Participation Agreement. Any Replacement Unit shall be deemed to have the Equipment Cost of the Unit for which it was substituted in accordance with Section 7.2 of the Lease.

"*ERISA*" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 331 et seq.).

"*Excepted Payments*" has the meaning specified in the Granting Clauses of the Indenture.

"*Excepted Rights*" has the meaning specified in the Granting Clauses of the Indenture.

"*Excess Amount*" has the meaning specified in Section 12 of the Participation Agreement.

"*Exchange Act*" means the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.).

"*Expenses*" has the meaning specified in Section 8.01 of the Trust Agreement.

"*Fair Market Renewal Term*" has the meaning specified in Section 16.5 of the Lease.

"*Fair Market Rental*" for a Unit means the semi-annual rent which would be obtained in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor, neither being under any compulsion to lease. In determining

Fair Market Rental for a Unit, it shall be assumed that Lessee has complied with all of the terms, provisions and conditions of the Lease and that such Unit is in the condition and configuration required upon its return to Lessor as provided therein and the value of, and any enhancement of value attributable to, any severable improvements shall be disregarded.

"Fair Market Value" for a Unit means the cash price which would be obtained in an arm's-length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell. In determining Fair Market Value for a Unit, it shall be assumed that Lessee has complied with all of the terms, provisions and conditions of the Lease and that such Unit is in the condition and configuration required upon its return to Lessor as provided therein. In determining the fair market value of any Unit the value of, and any enhancement of value attributable to, any severable improvements shall be disregarded (other than any improvement required by applicable law as determined pursuant to Section 12.2 of the Lease).

"First Closing Date" means the date occurring on or about November 21, 1994, on which the Units identified on Lease Supplement No.1 are purchased by Owner Trustee and leased to ALTSI under the Lease.

"First Closing Date Unit" means each Unit which becomes subject to the Lease on the First Closing Date.

"Fixed Rate Renewal Rent" with respect to any Unit means fifty percent (50%) of the average annual Base Rent payments for such Unit during the Base Lease Term.

"Fixed Rate Renewal Term" has the meaning specified in Section 16.5 of the Lease.

"FRA" means the Federal Railroad Administrator of the Department of Transportation.

"Governmental Authority" means any federal, state or local government or other governmental authority in the United States or any foreign government or any political subdivision or governmental authority thereof or any territory or possession of the United States or any international authority.

"Grant" and *"Granted"* have the meanings specified in the Granting Clauses of the Indenture.

"Guarantor" means American President Companies, Ltd., a Delaware corporation.

"*Guaranty*" shall mean the guaranty of American President Companies, Ltd., dated the First Closing Date, substantially in the form of Exhibit A to the Participation Agreement.

"*ICC*" means the United States Interstate Commerce Commission or any successor agency thereto.

"*Indemnified Parties*" means for purposes of Section 6.1 and Section 6.2 of the Participation Agreement, Owner Participant, Owner Trustee, Trust Company, Indenture Trustee, Loan Participant, each other holder from time to time of any Secured Note or a note issued pursuant to Section 2.03 of the Indenture and their respective successors and assigns and the Affiliates, agents, officers, directors, servants and employees of any thereof. "*Indemnified Party*" means any such Person individually.

"*Indenture*" means that certain Trust Indenture and Security Agreement dated as of November 15, 1994 between Owner Trustee and Indenture Trustee. Unless the context otherwise requires, "*Indenture*" shall include each Indenture Supplement.

"*Indenture Default*" means an event or condition which, after notice or lapse of time, or both, would become an Indenture Event of Default.

"*Indenture Event of Default*" has the meaning specified in Section 12.01 of the Indenture.

"*Indenture Supplement*" means any amendment or supplement to the Indenture adopted in accordance with Article XIII of the Indenture, including an Indenture Supplement substantially in the form of Appendix C to the Indenture.

"*Indenture Trustee*" means First Security Bank of Utah, National Association.

"*Installment Payment Date*" with respect to any Secured Note means each May 15 and November 15 of each year, commencing May 15, 1995, to and including the maturity date thereof for such Secured Note.

"*Institutional Investor*" means State of Wisconsin Investment Board and any "qualified institutional buyer" as that term is defined in Rule 144A of the Securities Exchange Act of 1934, as amended.

"*Instrumentality*" means a United States governmental agency, instrumentality, authority, entity or establishment.

"*Interchange Rules*" means the current interchange rules or supplements thereto of the Mechanical Division of the Association of American Railroads as the same may be in effect from time to time.

"Interim Amount" has the meaning specified in Section 9.6 of the Participation Agreement.

"Interim Term" for each Unit means the period prescribed therefor in Section 3 of the Lease.

"Investment" means the funds required to be delivered by Owner Participant to Owner Trustee on the Closing Date pursuant to Section 3 of the Participation Agreement to finance Owner Participant's Commitment.

"Lease" means that certain Lease of Railroad Equipment, dated as of November 15, 1994, between Owner Trustee, as lessor, and ALTSI, as lessee. Unless the context otherwise requires, *"Lease"* shall include each Lease Supplement.

"Lease Default" means any event which with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

"Lease Event of Default" has the meaning specified in Section 13.1 of the Lease.

"Lease Rent" has the meaning specified in Section 5.01 of the Indenture.

"Lease Supplement" means a supplement to the Lease in substantially the form of Exhibit A to the Lease, entered into between Lessor and Lessee (collectively, the *"Lease Supplements"*).

"Lease Term" with respect to any Unit means the period commencing on the Closing Date therefor and continuing to and including the Base Lease Expiration Date, or if Lessee exercises any renewal options contained in Section 16.4 of the Lease with respect to such Unit, the last day of the last Renewal Term for such Unit, in each case unless earlier terminated pursuant to the terms of the Lease.

"Lease Termination Date" with respect to any Unit means the Base Lease Expiration Date for such Unit or, if applicable, the expiration date of any Renewal Term.

"Lessee" means ALTSI in its capacity as lessee under the Lease.

"Lessor" means Owner Trustee in its capacity as lessor under the Lease.

"Lessor's Liens" means any Lien affecting or in respect of the Equipment, the Lease or the Trust Estate arising as a result of (i) claims by or against Lessor, in its individual capacity or as trustee, or Owner Participant, in each case, unrelated to the transactions contemplated by the Operative Documents, or (ii) any breach of any covenant or agreement of Lessor, in its individual capacity or as trustee, or Owner Participant, set forth in any of the Operative Documents, or (iii) taxes imposed against Lessor, in its individual capacity or as trustee, or Owner Participant, or the Trust Estate which are not

indemnified against by Lessee pursuant to the Participation Agreement or under the Tax Indemnity Agreement.

"*Liability Insurance*" has the meaning specified in Section 8.1(i)(b) of the Lease.

"*Lien*" means any mortgage, pledge, lien, charge, claim, encumbrance, lease, sublease, sub-sublease or security interest.

"*Loan Participant*" means State of Wisconsin Investment Board.

"*Loan Participant's Commitment*" has the meaning set forth in Schedule I to the Participation Agreement.

"*Loss*," as it relates to the Owner Participant, has the meaning set forth in Section 5(a) of the Tax Indemnity Agreement.

"*Majority in Interest of Secured Note Holders*" at any time shall mean holders of more than 50% in aggregate principal amount of the Secured Notes which are Outstanding at such time.

"*Make-Whole Amount*" shall mean in connection with any applicable prepayment the excess, if any, of (i) the aggregate present value as of the date of such prepayment of each dollar of principal being prepaid and the amount of interest (exclusive of interest accrued to the date of prepayment) that would have been payable in respect of such dollar if such prepayment had not been made, determined by discounting such amounts at the Discount Rate from the respective dates on which they would have been payable, over (ii) 100% of the principal amount of the outstanding Secured Notes being prepaid. For purposes of any determination of the Make-Whole Amount:

"*Discount Rate*" shall mean .50%, plus the arithmetic mean of the yields for the two columns under the heading "Week Ending" published in the statistical Release under the caption "*Treasury Constant Maturities*" for the maturity (rounded to the nearest month) corresponding to the Weighted Average Life to Maturity of the principal being prepaid. If no maturity exactly corresponds to such Weighted Average Life to Maturity, yields for the published maturity next longer than the Weighted Average Life to Maturity and for the published maturity next shorter than the Weighted Average Life to Maturity shall be calculated pursuant to the immediately preceding sentence and the Discount Rate shall be interpolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purposes of calculating the Discount Rate, the most recent Statistical Release published prior to the date of determination of the Make-Whole Amount shall be used. "*Statistical Release*" shall mean the then most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which established yields on actively traded U.S. Government Securities adjusted to

constant maturities or, if such statistical release is not published at the time of any determination hereunder, then such other reasonably comparable index which shall be designated by a Majority in Interest of Secured Note Holders.

"Weighted Average Life to Maturity" of the principal amount of the Secured Notes being prepaid shall mean, as of the time of any determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of such principal by the aggregate amount of such principal. The term *"Remaining Dollar-Years"* of such principal shall mean the amount obtained by (i) multiplying (x) the remainder of (1) the amount of principal that would have become due on each scheduled payment date if such prepayment had not been made, less (2) the amount of principal on the Secured Notes schedules to become due on such date after giving effect to such prepayment and the application thereof, by (y) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination and such scheduled payment date, and (ii) totaling the products obtained in (i).

"Manufacturer" means any of, and *"Manufacturers"* means each of, Gunderson Inc. and Thrall Car Manufacturing Company.

"Net Economic Return" means Owner Participant's nominal after-tax multiple investment sinking fund yield and total after-tax cash flow, computed on the basis of the assumptions, including the Tax Assumptions and methodology, used by Owner Participant in originally entering into the transactions contemplated by the Lease through the end of the Lease Term.

"Non-U.S. Person" means any individual who is not a citizen of the United States, or any partnership, corporation, joint venture, trust, unincorporated association or other entity that is not either a citizen of the United States or organized under the laws of the United States or any state thereof.

"Note Register" has the meaning specified in Section 4.01 of the Indenture.

"Obligor" with respect to a Secured Note, means Owner Trustee.

"Officer's Certificate" with respect to any corporation or other entity means a certificate executed on behalf of such corporation or other entity by its Chief Executive Officer, President, Chief Financial Officer, one of its Vice Presidents, its Treasurer, Assistant Treasurer or its Secretary (including, with respect to Owner Trustee, any Authorized Officer).

"Old Note" has the meaning specified in Section 4.03 of the Indenture.

"Operative Documents" means, collectively, the Participation Agreement, the Trust Agreement, the Indenture, any Indenture Supplement, the Lease, any Lease Supplement, the Guaranty, the Tax Indemnity Agreement, the Secured Notes, and any Purchase Agreement Assignment.

"*Opinion Addressees*" mean Loan Participant, Owner Trustee, Indenture Trustee, Owner Participant, Guarantor and ALTSI.

"*Outstanding*" with respect to Secured Notes, means, as of the date of determination, all Secured Notes theretofore delivered under the Indenture, except:

(i) Secured Notes theretofore canceled by Owner Trustee or delivered to Owner Trustee for cancellation;

(ii) Secured Notes which are deemed to have been paid in full in accordance with the last sentence of Section 7.04 of the Indenture; and

(iii) Secured Notes in exchange or replacement for which other Secured Notes shall have been delivered under the Indenture.

"*Overall Transaction*" means the arrangements and transactions contemplated by and reflected in the Operative Documents.

"*Overdue Rate*" means 10.39 percent per annum.

"*Owner Participant*" means KBNY Leasing Inc., a New York corporation.

"*Owner Participant's Commitment*" has the meaning set forth in Schedule III to the Participation Agreement.

"*Owner Participant Documents*" means the Trust Agreement, the Participation Agreement and the Tax Indemnity Agreement.

"*Owner Trustee*" means Meridian Trust Company, a Pennsylvania trust company, not in its individual capacity but solely as Owner Trustee under the Trust Agreement (ALTSI Trust 94-B).

"*Participant*" or "*Participants*" means Owner Participant and each Loan Participant.

"*Participation Agreement*" means that certain Participation Agreement, dated as of November 15, 1994, among ALTSI, Guarantor, Owner Participant, Loan Participant, Indenture Trustee, Owner Trustee and Trust Company.

"*Payment Instructions*" with respect to Loan Participant means the payment instructions set forth in Schedule I to the Participation Agreement for such Person.

"*Permitted Investment*" means (i) interest-bearing demand or time deposits (including certificates of deposit) which are either (a) fully insured by the Federal Deposit Insurance Corporation, or (b) held in banks and savings and loan associations, having general obligations rated at least "AA" or equivalent by Standard and Poor's Corporation

or Moody's Investors Service, Inc., (ii) short-term debt securities issued by or entitled to the full faith and credit of the United States government or (iii) commercial paper which is rated "A-1" or better (or comparable ratings) by Standard & Poor's Corporation or "P-1" or better (or comparable ratings) by Moody's Investors Service, Inc. or the successors to such rating organizations, in each case due within two hundred ten (210) days of the date of purchase.

"Permitted Liens" means (i) Liens for taxes, assessments or governmental charges or levies in each case not due and delinquent, (ii) inchoate materialmen's, mechanics', workmen's, repairmen's or other like Liens arising in the ordinary course of ALTSI's business and in each case not delinquent, (iii) the Lien of the Indenture, (iv) with respect to the Lessee, Lessor's Liens, and (v) subleases or assignments permitted under the Lease.

"Person" or "Persons" means any individual, firm, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

"Property Insurance" has the meaning specified in Section 8.1(i)(a) of the Lease.

"Purchase Agreements" means any of (i) that certain Purchase Agreement, dated June 29, 1994, between ALTSI and Gunderson, Inc., and (ii) that certain Purchase Agreement, dated July 14, 1994, between ALTSI and Thrall Car Manufacturing Company, including all modifications and supplements of each thereof pertaining to the Units covered thereby.

"Purchase Agreement Assignments" means, collectively, each Purchase Agreement and Warranty Assignment, dated as of November 15, 1994, among ALTSI, the applicable Manufacturer and Owner Trustee whereby ALTSI assigns the applicable Purchase Agreement to Owner Trustee and the applicable Manufacturer consents and agrees to the terms and conditions of such assignment.

"Purchased Units" means any Units with respect to which Lessee shall have acquired the Units pursuant to Section 16.1 of the Lease.

"Redelivery Location" has the meaning specified in Section 17.1 of the Lease.

"Reference Rate" means the prime rate, as announced from time to time, of J.P. Morgan & Co.

"Reimbursement Amount" has the meaning specified in Section 9.6 of the Participation Agreement.

"Renewal Rent" means with respect to a Renewal Term either Fixed Rate Renewal Rent or Fair Market Rental, as applicable.

"Renewal Term" means a Fixed Rate Renewal Term or a Fair Market Renewal Term.

"Rent" means Base Rent, Renewal Rent and Supplemental Rent, collectively.

"Rent Factor" for any Rent Payment Date means with respect to any Unit, the percentage of Equipment Cost applicable to such Unit set forth opposite such Rent Payment Date on Schedule III to the Participation Agreement, in each case as such Rent Factors may have been adjusted pursuant to Section 4.3 of the Lease or Section 16 of the Participation Agreement.

"Rent Payment Date" for a Unit means each May 15 and November 15 commencing May 15, 1995 and ending on the Base Lease Expiration Date.

"Replacement Note" has the meaning specified in Section 4.03 of the Indenture.

"Replacement Unit" for a Unit suffering a Casualty Occurrence means a forty-eight (48) foot or greater double-stack, articulated or nonarticulated intermodal railcar having a current fair market value, residual value, utility and remaining economic useful life at least equal to such Unit being replaced, assuming that the Unit being replaced was operated and maintained as required by the terms of the Lease immediately prior to such Casualty Occurrence.

"Responsible Officer" of an entity means any corporate officer or other responsible official of such entity who is designated as the recipient of a notice pursuant to the provisions of any Operative Document or who, in the normal performance of such official's operational responsibilities, would have knowledge of the matter at issue and the relevant provisions of any applicable Operative Document. When used with respect to Owner Trustee, "Responsible Officer" means any officer within the Principal Corporate Trust Office or the Corporate Trust Administration (or any successor group) thereof assigned by Owner Trustee or Indenture Trustee to administer its corporate trust matters.

"Restricted Security" means a Secured Note unless and until (i) it has been effectively registered in accordance with a registration statement under the Securities Act covering it or (ii) it has been distributed to the public pursuant to Rule 144 (or any successor rule) under the Securities Act.

"Second Closing Date" means the date after November 21, 1994, and before December 31, 1994 on which the Units identified on Lease Supplement No.2 are purchased by Owner Trustee and leased to ALTSI under the Lease.

"Second Closing Date Unit" means each Units which becomes subject to the Lease on the Second Closing Date.

"Secretary" means the Secretary of the Department of Transportation.

"*Secured Note*" means each of the notes of Owner Trustee, substantially in the form thereof specified in Appendix A to the Indenture, as are delivered pursuant to the Indenture and any Replacement Note.

"*Securities Act*" means the Securities Act of 1933 (15 U.S.C. § 77a et seq.).

"*Special Purchase Date*" has the meaning specified in Schedule III to the Participation Agreement.

"*Special Purchase Price*" for any Unit has the meaning specified in Schedule III to the Participation Agreement.

"*Specified Default*" means a Lease Default specified in Sections 13.1(i), (ii), (iii), (vi), (vii), (viii), (ix), (x) and (xi) of the Lease.

"*Statistical Release*" means the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded U.S. Government Securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination hereunder, then such other reasonably comparable index which shall be designated by Loan Participant.

"*Substituted Participant*" has the meaning specified in Section 3.2(iii) of the Participation Agreement.

"*Supplemental Rent*" means any and all amounts, liabilities and obligations (other than Base Rent or Renewal Rent) which Lessee assumes or agrees to pay to any Person under the Lease or under the Participation Agreement, including, without limitation, Section 4.2 of the Lease and Sections 6 and 7 of the Participation Agreement, or under any other Operative Document, including, without limitation, payments of Casualty Value and amounts measured by reference thereto, indemnity payments and payments pursuant to the Tax Indemnity Agreement.

"*Tax Assumptions*" has the meaning specified in Section 2 of the Tax Indemnity Agreement.

"*Tax Indemnity Agreement*" means that certain Tax Indemnity Agreement dated as of November 15, 1994 between Owner Participant and ALTSI.

"*Taxes*" has the meaning specified in Section 6.1(i) to the Participation Agreement.

"*Termination Date*" has the meaning specified in Section 26.1 of the Lease.

"*Transaction Expenses*" has the meaning specified in Section 7.1 of the Participation Agreement.

"*Transferee*" means the Person to whom Owner Participant has transferred its interest in the Trust Estate in accordance with Section 10 of the Participation Agreement.

"*Trust Agreement*" means that certain Trust Agreement, dated as of November 15, 1994, between Owner Participant and Meridian Trust Company, as Owner Trustee and Trust Company.

"*Trust Company*" means Meridian Trust Company, a Pennsylvania trust company in its individual capacity.

"*Trust Estate*" means all estate, right, title and interest of Owner Trustee in and to the Equipment and the Lease and any other property contributed by Owner Participant, including all amounts of Rent, insurance proceeds and requisition, indemnity or other payments of any kind for or with respect to the Equipment.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 (15 U.S.C. § 77aaa et seq.).

"*Trust Indenture Estate*" has the meaning specified in the Granting Clauses of the Indenture.

"*Unit*" and "*Units*" have the meanings set forth under "*Equipment*" and shall include Tier I Units and Tier II Units.

"*Voluntary Termination*" with respect to any Unit shall mean a termination of the Lease with respect to such Unit pursuant to Section 26 of the Lease.

ANNEX B

INTENTIONALLY OMITTED